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## NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 27th February, 1959:—

| Issue No. | No. and date | Issued by | Subject |
|---|---|---|---|
| 30 | S. O. 439, dated 21st February, 1959. | Ministry of Food and Agriculture. | Authorizing the Secretary to the Government of Punjab in the Food and Supplies Department, to determine the average market rate of wheat in any locality in Punjab State. |
| 31 | S. O. 485, dated 27th February, 1959. | Cabinet Secretariat. | President's Order that the Partition Secretariat shall cease to exist from 1st March, 1959. |

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

## PART II—Section 3—Sub-section (ii)

## Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administrations of Union Territories).

### ELECTION COMMISSION, INDIA

*New Delhi, the 24th February 1959*

**S.O. 489.**—In pursuance of clause (b) of sub-section (6) of section 116A of the Representation of the People Act, 1951, and in continuation of its notification No. 82/284/57/186, dated the 27th August, 1958, published in the Extraordinary

issue of the Gazette of India, dated the 5th September, 1958 and also in the Uttar Pradesh Government Gazette Extraordinary, dated the 12th September, 1958 under section 106 of the said Act, the Election Commission hereby publishes the judgment dated the 10th December, 1958, of the High Court of Judicature at Allahabad delivered on the appeal filed before that Court by Shri Shri Krishna Agarwal against the order dated the 6th August, 1958, of the Election Tribunal, Kanpur, in Election Petition No. 284 of 1957.

## IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL SIDE

APPELLATE JURISDICTION

*Dated Allahabad, the 10th day of December, 1958.*

PRESENT

The Hon'ble M L. Chaturvedi—*Judge.*

FIRST APPEAL No. 382 OF 1958

First Appeal against the judge of Sri S. D. Singh, District Judge, acting as the member of the Election Tribunal, Kanpur, dated 6th August, 1958, in Election Petition No. 284 of 1957.

Sri Sri Krishna Agarwal—*Petitioner-Appellant.*

*Versus*

Sri S M. Banerji—*Respondent.*

BY THE COURT

*Delivered by Hon'ble Chaturvedi, J.*

This is an appeal under section 116-A of the Representation of the People Act (Act No XLIII) of 1951 as amended by Act XXVII of 1956.

The appeal arises under the following circumstances; Elections were to be held to fill a seat from the Kanpur Parliamentary Constituency No. 331. Nomination papers were to be filed between 19th January 1957 and 29th January, 1957. A number of persons filed nomination papers including the respondent Sri S. M. Banerji and one Suraj Prasad Awasthi. It is not necessary to mention the names of all the other persons who filed their nomination papers. The scrutiny was held on the 1st February 1957 as a result of which all the nomination papers were accepted. It may be stated here that no objection was taken at the time of the scrutiny to the nomination paper of the respondent. The votes were polled on the 6th March 1957 and the result was declared on the 13th March 1957. The respondent received the largest number of votes and he was declared as the duly elected candidate, on the 13th March 1957. The appellant, who is an elector in the constituency, then submitted an election petition to the Election Commission which was forwarded for trial and disposal to Sri S. D. Singh, District Judge of Kanpur who was appointed Election Tribunal. A number of grounds were taken in the petition which was contested by the respondent only. The Election Tribunal decided all the points against the appellant and it dismissed the election petition. Hence this appeal

In the appeal before us we are concerned only with the points all of which arise out of the same facts. The facts may first be stated before stating the points. The respondent was employed as a Supervisor A Grade in the Government

Ammunition Factory at Kirki and he was dismissed from service on the 24th January 1956, but not for corruption or disloyalty to the State. The respondent filed his nomination paper within the time allowed, but it was not accompanied by a certificate from the Election Commission as enjoined by section 33(3) of the Act. No objection was taken to his nomination and the Returning Officer accepted it without making any enquiry under section 36 of the Act Subsequently, on the 25th August 1957, the respondent obtained the necessary certificate from the Election Commission. The main question raised before the Tribunal was that the nomination paper of the respondent had been improperly accepted by the Returning Officer. The Election Tribunal has decided this question against the appellant on the interpretation of the pleadings and on a finding that the pleadings were defective. Before it delivered its judgment, applications for amendment of the relevant paragraphs in the election petition were filed before it and it dismissed those applications The questions raised by the appellant before us are that the amendment applications were wrongly refused, that even as the election petition stood without the amendment it contained sufficient averment of facts to make out a ground under section 100(1)(d)(i). In the alternative it was said that it made out a ground under section 100(1)(d)(iv).

Learned counsel for the respondent urged before us that even if the Election Tribunal was wrong in refusing to amend the relevant paragraphs of the election petition, no useful purpose would be served by considering this question now, because in any case, it is not possible to hold that the nomination paper of the respondent was improperly accepted. The argument was that no objection having been raised before the Returning Officer as to the validity of the nomination paper of the respondent, it was not open to the Election Tribunal to enter into the question whether as a matter of fact his nomination paper had been wrongly accepted or not. Mr. Sadhan Chandra Gupta, learned counsel for the respondent, raised a new point before us today that section 33(3) of the Representation of the People Act is inconsistent with Article 14 of the Constitution and it is, therefore, a void piece of legislation.

We propose first to consider the question whether the order of the Election Tribunal refusing to allow amendments was a correct order. We may refer to a few facts and some relevant provisions of law. Paragraph 5 of the election petition contains the grounds on which it was claimed that the election of the respondent should be declared void Paragraph 5(a) (b) and (c) raised the question that in spite of the dismissal of the respondent by the Government, he continued to be in Government service till the date of the dismissal of his writ petition and was thus disqualified from seeking election to the Parliament. The allegation is on the face of it without any substance. The respondent was dismissed on the 24th January, 1956 and he filed a writ petition in the High Court against his dismissal. No interim stay order was issued in the petition staying the operation of the order of dismissal. The order of dismissal thus clearly stood on the date when the nomination paper was filed, and it could not be said that the respondent was in the employment of the Government on the date he filed his nomination paper. Subsequently he withdrew his writ petition. We need not go further into the matter because learned counsel for the appellant has not challenged the correctness of the order of the Election Tribunal on this point. The important paragraphs are paragraphs 5(d) and 5(i). Before referring to them we may briefly state that sub-paragraphs (e) (f) and (j) paragraph No. 5 were ordered to be deleted by the Election Tribunal and Sub-paragraph (g) made reference to the commission of corrupt practices decision on which has gone against the appellant and the appellant has not again challenged the correctness of the order nor has he challenged the correctness of the order with respect to the decision concerning the allegation in sub-paragraph (h). We are thus left only with sub-paragraphs (d) and (i). Sub-paragraphs (d) and (i) in the original petition stood as follows:

> "(d) That apart from the above mentioned reasons the nomination paper of the respondent was also improperly accepted by the Returning Officer, inasmuch as, the respondent having been dismissed from Government Service did not obtain a certificate in the prescribed manner from the Election Commission to the effect that he had not been dismissed for corruption or disloyalty to the State."
>
> ** ** ** ** **
>
> "(i) That the provisions of the Representation of the People Act 1951 were not complied with by the respondent as required U/S 9 Clause 3 of the Representation of the People Act."

On the 17th July 1957, an application was made on behalf of the appellant for the amendment of both the sub-paragraphs. In paragraph (i) the only amendment sought was that instead of figure 9 figure 33 might be substituted. In paragraph (d) the amendment sought was that it might be made clear that the nomination paper of the respondent was not accompanied by a certificate when it was presented before the Returning Officer, and that the improper acceptance of the nomination paper being that of the returned candidate, there was a presumption that the result of the election had been materially affected by the acceptance of the nomination paper. Subsequently another application was made on the 3rd August 1957 praying for the amendment of the application for amendment made on the 17th July 1957, by substituting a shorter paragraph that which was sought to be substituted by the application dated 17th July 1957. The application of the 3rd August 1957 is that at the end of paragraph 5(d) the following be added in the petition:

> "and such a certificate did not accompany the nomination paper of the respondent and the acceptance of his nomination paper materially affected the result of the election."

The same day an application was filed on behalf of the respondent praying that sub-paragraphs (d) and (i) were too vague and they should be deleted as being vague, indefinite and irrelevant". On the 12th August 1957, the appellant filed a reply to the application of the respondent dated the 3rd August 1957 denying that the allegations in paragraph 5(d) and (i) were vague and liable to be struck off. On the 12th August, 1957 the Court passed an order rejecting both the applications filed by the appellant for the amendment of sub-paragraphs (d) and (i) of paragraph 5, one of which was filed on the 17th July 1957 and the other on the 3rd August 1957. The application filed by the respondent on the 3rd August for deletion of certain paragraphs was decided by the Tribunal on the 12th February 1958 The Tribunal held that the particulars given in paragraph 5(d) were sufficient and that the question whether they made out a ground for declaring the election to be void was a different matter which would be considered in due course. The respondent, on that date withdrew the objection with respect to sub-paragraph (i) that it was vague and indefinite. He withdrew his objection with respect to some of the other sub-paragraphs also with which we are not concerned. The Tribunal asked for further particulars in respect of certain others, which again need not be considered. There were then certain other proceedings with respect to the amended sub-paragraph (h). With that paragraph also we are not concerned in this appeal, because learned counsel for the appellant has not challenged the findings of the Tribunal with respect to the allegations contained in sub-paragraph (h).

Now Mr. S. C. Khare, learned counsel for the appellant, state that he withdraws his prayer made before the Election Tribunal for the amendment of sub-paragraph (i) of the election petition also. There then remains only the question whether the Election Tribunal wrongly refused to permit amendment of sub-paragraph (d) of the election petition. The order of the Tribunal rejecting the applications for amendment filed by the appellant was passed on the 12th August 1957 as already stated, and we, therefore have to consider the correctness of that order in so far as it concerns paragraph 5(d) of the election petition.

We may state that in the written statement filed by the respondent, the respondent denied that he was dismissed from Government service for corruption or disloyalty and he further averred that no objection was taken to his nomination at the time of the scrutiny of the nomination paper. The Tribunal framed issues Nos. 3, 4 and 9, with respect to the allegations contained in paragraph 5(d) and (i), and decided those issues against the appellant. He naturally gave a decision against the appellant while deciding issues 3. 4 and 9 because he had disallowed the applications made for amendment of those sub-paragraphs. The Tribunal, however, added another ground while deciding the election petition which was to the effect that assuming that paragraph 5(d) was amended, it would not in any way help the appellant because no objection having been taken to the nomination paper till the time that it was accepted by the Returning Officer, the petitioner could not take the ground in the election petition that the nomination paper of the respondent had been wrongly accepted.

Before proceeding to consider the order of the 12th August 1957 we may refer to certain provisions of the Representation of the People Act which are relevant to the present enquiry. Section 7(f) is to the effect that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State

> "if, having held any office under the Government of India or the Government of any State or under the Crown in India or under the Government of an Indian State, he has, whether before or after the commencement of the Constitution, been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal."

Section 9(3) is to the effect that if any question is raised as to whether a person was disqualified under section 7(f), the production of a certificate issued in the prescribed manner by the Election Commission that such person has not been dismissed for corruption or disloyalty to the State shall be conclusive proof that he is not disqualified under that clause Section 33(3) is to the effect that where a candidate is a person who has been dismissed from Government service and a period of five years has not elapsed since the dismissal, such person shall not be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission that he has not been dismissed for corruption or disloyalty to the State.

Sub-section (2) of section 36 casts a duty on the Returning Officer to examine the nomination papers and decide all objections which may be made to any nomination. He may reject any nomination paper on the grounds mentioned in the sub-section. One of these grounds given under clause (b) is that there has been a failure to comply with any of the provisions of section 33 or section 34 keeping the above provisions of law in view, we have to see whether any ground for declaring the election of the respondent to be void was taken by the appellant in paragraph 5(d) of the election petition.

The law on the question of permissible amendments has been laid down by the Supreme Court in the case of Harish Chandra Bajpai V. Triloki Singh (A.I.R. 1957 S.C. 444). Their Lordships have summarised the result of the discussion of the different points raised before them in paragraph 23 of the report which runs as follows:

> "The result of the foregoing discussion may thus be summed up:
>
> (1) Under section 83(3) the Tribunal has power to allow particulars in respect of illegal or corrupt practices to be amended provided the petition itself specifies the grounds or charges, and the power extends to permitting new instances to be given.
>
> (2) The Tribunal has power under O. 6 R 17 to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will be barred."

It would thus appear that as far as old section 83(3) was concerned, it confessed a power on the Tribunal to allow the particulars in respect of illegal or corrupt practices to be amended. With that portion we are not concerned. The Supreme Court has also held that apart from section 83(3), the Tribunal had a power under Order 6 rule 17 of the Code of Civil Procedure to allow the amendment of an election petition. There were, however, two circumstances in which the amendment could not be allowed. They were (1) that the amendment should not be such as to permit any new ground or charges to be raised or (2) to so alter the character of the election petition as to make it a new petition, if a fresh petition on those allegations would be barred by time on the date the application for amendment had been made. It may further be stated that the main object of insisting on the pleadings being clear is that the other party may have proper notice of the ground of attack which he has to meet. The pleadings are not to be scrutinised with meticulous care and the form is not of importance. The important thing is whether in substance the petition contains the particular ground of attack or not; Keeping in view the above principles which are well established, we may now consider whether the original

sub-paragraph (d) of paragraph 5 contains any ground and, if so, what? and whether the application for amendment could be allowed for a new ground was sought to be raised in the garb of an amendment.

We have already quoted paragraphs 5(d) of the election petition. It clearly says that apart from the reasons mentioned before-hand, the nomination paper of the respondent was improperly accepted by the Returning Officer because the respondent, having been dismissed from Government service, had not obtained a certificate in the prescribed manner from the Election Commission. The certificate was to be to the effect that the respondent had not been dismissed for corruption or disloyalty to the State. A reading of the sub-paragraph would clearly show that the appellant was taking the ground that the nomination paper of the respondent had been improperly accepted by the Returning Officer and the impropriety consisted in the fact that though the respondent had been dismissed from Government service and though he had not obtained a certificate from the Election Commission, his nomination paper was still accepted. The ground in our opinion would fall under section 100(1)(d)(1), under which the ground mentioned is that the result of the election had been materially effected, by improper acceptance of any nomination. The necessary words "improper acceptance of nomination" were used and it was further alleged that the respondent had not obtained the certificate which he was to obtain from the Election Commission.

Learned counsel for the respondent has contended that the words used in sub-paragraph (d) are that the respondent did not "obtain a certificate" and not that the "certificate did not accompany the nomination paper". The argument is that simply saying that he had not obtained the certificate would not be sufficient for showing that it had not accompanied the nomination paper, because it may be that the proposer of the respondent may have obtained the certificate or the respondent's counsel or somebody else may have obtained it. The averment in the paragraph only is that the respondent had not obtained the certificate and this is not a sufficient averment that the certificate did not accompany the nomination paper. It is true that the word 'obtained' is not the word that has been used in section 33(3) and it may also be possible that the proposer of a candidate or his counsel may have obtained the necessary certificate from the Election Commission. But the appellant had stated in paragraph 3 of the petition that all the candidates including the respondent filed their nomination papers. It is true that even if the nomination paper had been filed by the proposer it might have been said that the respondent had filed it through the proposer. But on the proved facts of this case we know that it was the respondent himself who had actually filed the nomination paper. The nomination paper that has been filed bears the endorsement that the respondent presented it before the Returning Officer. The appellant is presumed to know the fact and the respondent also must be knowing it. The parties therefore very well knew that it was the respondent who had filed the nomination paper and, if the respondent had not even obtained the certificate, it was obvious that it could not have accompanied the nomination paper. After having stated that the respondent had filed the nomination paper and that he had not obtained the certificate, the appellant may well have thought that there was no point in saying further that the certificate did not accompany the nomination paper. When the respondent had not obtained it at all there was no question of the certificate accompanying the nomination paper.

Learned counsel for the respondent contended that while considering the pleadings, the facts which, were subsequently proved should not be taken into consideration. But we do not subscribe to this proposition. The object of the pleadings is to give notice to the other party of the ground of attack. When both the parties knew the particular state of affairs to have existed, the pleadings can be read in the light of the known facts of the case. The Tribunal has, after mentioning the above point made reference also to the fact that the allegations contained in sub-paragraph (d) related to the disqualification of the respondent. We do not consider it possible to accept that suggestion, because the ground taken very clearly is that the nomination paper of the respondent was improperly accepted. The question of disqualification of the respondent was quite a different matter.

The other serious objection that has been taken by learned counsel for the respondent in arguments is that there is no averment in this sub-paragraph to the effect that this improper acceptance of the nomination paper materially affected the result of the election. It is true that the complete ground for setting aside the election on such an allegation is that the improper acceptance of

the nomination paper materially affected the result of the election, and the sub-paragraph is defective inasmuch as it does not mention the further fact that the result of the election was materially affected by the improper acceptance. But on the facts of this case the position must have been so obvious to all concerned that the omission to state the fact that the result had been materially affected could not make any difference. It had been stated in paragraph No. 4 of the election petition that the respondent had been declared elected to the seat. If the nomination paper was improperly acceptance affected the result, as the improper acceptance of the nomination paper is of the returned candidate himself. If any authority for the proposition were needed we may refer to an observation of the Supreme Court in the case of Vashisht Narain Sharma *v.* Dev Chandra (A.I.R. 1954 S.C. 513). The observation is that where the person whose nomination paper has been improperly accepted is the returned candidate himself, it may be readily conceded that the result of the election had been materially affected in the case. In some cases the omission to mention the words "the result of the election has been materially affected" may lead to the conclusion that the ground had not been stated. For instance, If the corrupt practice is proved to have been committed by a person without the consent of the returned candidate or the election agent and it is not stated that the action of such a person materially affected the result of the election, it may be possible to hold that a proper ground for setting aside the election had not been averred. But this is not the position in the case before us. The returned candidate being himself the person concerning whom it was said that his nomination paper had been improperly accepted, it was obvious that this was an irregularity or illegality materially affecting the result of the election. The omission to aver such an obvious fact we think, should not be held to be fatal to the pleadings on the point. We do not agree with the view of the Election Tribunal expressed in its order dated the 12th August 1957 that the amendment of paragraph 5(d) prayed by the appellant, purported to raise a new ground or there it altered the nature of the petition so as to make it a different one. We consequently hold that it was open to the Election Tribunal to have allowed the application for amendment of the sub-paragraph. We also think that the Tribunal should have permitted the amendment because the ground of attack had been clearly made out and the only mistake committed by the appellant was not to put it in proper words. The amendment would have permitted a proper trial of the ground that the appellant had taken. We consequently think that the amendment should have been allowed.

In view of the fact that we have allowed the application for amendment we need not consider the alternative argument of learned counsel for the appellate that even as the sub-paragraph originally stood it contained a ground contemplated by section 100(1)(d)(i) of the Act.

As regards the point raised by learned counsel for the respondent that it was not necessary to consider whether the amendment should be allowed or not, because even if it was allowed, it would not lead to the election being declared void on this ground, we have just been told, while dictating the judgment, that Mr. S. N. Dwivedi withdraws the point and does not want a decision on it at this stage.

There now remains the other point argued by Mr. S. C. Gupta who argued the case on behalf of the respondent today. His contention is that section 33(3) of the Act is a void piece of legislation inasmuch as it is inconsistent with Art. 14 of the Constitution. He says that sub-section (3) makes an improper discrimination between the Government servants who had been removed or who had resigned from service and the Government servants who had been dismissed. The Government servants who have resignd or who have been removed need not attach any certificate from the Election Commissioner along with their nomination papers; but the Government servants who have been dismissed have been enjoined that a certificate from the Election Commission that they were not dismissed for corruption or disloyalty, must accompany the nomination paper. He distinguishes the case of Jamuna Prasad Mukhariyav. Lachhi Ram (A.I.R. 1954 S.C. 686) on the ground that in that case the question was of the curtailment of the right of freedom of speech which is guaranteed by Art. 19(1)(a) of the Constitution. The Supreme Court in that case held that sections 123(5) and 124(5) of the unamended Representation of People Act were not *ultra vires* Art. 19(1)(a) of the Constitution. The said section did not interfere with a citizen's fundamental right of freedom of speech, because those sections do not stop a man from speaking but merely prescribe conditions which must be observed if he wanted to enter Parliament. Their Lordships observed that the right to stand as a candidate for election was not a common law right but was a special right created by statute and it could be exercised only on the conditions laid

down by the statute. The chapter on fundamental rights had no bearing on a right like this created by the statute, because persons had no fundamental right to be elected as members of the Parliament, but if they wanted to be so elected they had to observe the conditions. It is true that their Lordships were not considering the applicability of Art. 14 of the Constitution and a distinction can be made between that case and the case before us on that ground. But we do not think that in fact any improper discrimination has been created by section 33(3). The Legislature has classified Government servants into those who had ceased to the Government servants by dismissal and in other ways. It is well known that the order of dismissal is always for some serious fault and it disentitles a Government servant to seek re-employment under the Government, unless the Government is prepared to condone the fault for which the servant was dismissed. The case of removal is different and it does not entail any such consequences. A Government servant who has himself resigned cannot possibly be placed in worse position than an ordinary citizen. In the case of those Government servants who had been dismissed it was considered necessary to have some enquiries made beforehand, in order to see whether within a period of five years of their dismissal they should be permitted to seek election to the Legislatures of the State. With this object in view the Parliament made it obligatory on a Government servant, who had been dismissed within a period of five years of the date of the nomination, to obtain a certificate from the Election Commission that he had not been dismissed for corruption or disloyalty. Under section 7(f) he had been dismissed for corruption or disloyalty he would be disqualified from seeking election. In order to show that he was not disqualified in spite of his dismissal he is required to obtain a certificate to that effect from the Election Commission, and the Election Commission is not likely to grant that certificate unless it is a fact that the dismissal was nor for corruption or disloyalty. An enquiry in the case of a Government servant who had been dismissed was considered necessary though it was not considered necessary in the case of a Government servant who had been removed or who resigned from service. The Legislature has made a reasonable classification dividing Government servants into two categories (1) those who had been dismissed and (2) those who had ceased to be Government servants for other reasons. The ground of the classification was also connected with the object of the enactment. The object of the enactment is to see that undesirable persons who have once been found guilty of disloyalty or corruption should not be permitted to seek election to the Legislatures within a period of five years of their dismissal. We consequently think that this objection of learned counsel also has no force and we shall not be justified in dismissing the election petition and the appeal on the ground that section 33(3) of the Act is a void piece of legislation.

We accordingly grant the application made by the appellant on the 3rd of August 1957 praying for the addition of a sentence at the end of the existing paragraph 5(d). At the end of that paragraph the following sentence shall be added:—

> "And such a certificate did not accompany the nomination paper of the respondent and the acceptance of his nomination materially affected the result of the election."

The appeal is allowed and the order of the Election Tribunal dated the 6th August 1958 dismissing the election petition filed by the appellant is set aside. But in view of what we have said above, the Election Tribunal will now decide only the issues that arise out of the averments made in the amended paragraph 5(d) of the election petition. It would be open to the Election Tribunal to permit the parties to lead evidence in respect of the ground which the amended paragraph 5(d) discloses. The respondent will also have a right to file a supplementary written statement.

The costs here and hithertofore shall abide the result of the election petition.

(Sd.) M.L.C.

(Sd.) J.N.T.

*The 10th December*, 1958.

[No. 82/284/57/71.]

**S.O. 490.**—Whereas the election of Sardar Surjit Singh Majithia as a member of the House of the People from the Tarn Taran constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Sardar Dayal Singh, son of S. Basant Singh, resident of Fatehabad, Tehsil Tarn Taran, District Amritsar;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION TRIBUNAL, CHANDIGARH

ELECTION PETITION NO. 225 OF 1957.

BEFORE SHRI RAMA PRASAD MOOKERJEE, RETIRED JUDGE OF HIGH COURT AT CALCUTTA AND MEMBER, ELECTION TRIBUNAL, CHANDIGARH.

Sardar Dayal Singh, son of S. Basant Singh, caste Sikh, resident of Fatehabad, Tehsil Tarn Taran—*Petitioner.*

*Versus*

Sardar Surjit Singh Majithia, Deputy Defence Minister, New Delhi—*Respondent.*

Shri Jatinder Vir Gupta—*Advocate for the Petitioner.*

Shri Veda Vyas,
Shri Bal Raj Tuli and
Shri S. N. Kapahi,
—*Advocates for the Respondent.*

FINAL ORDER

*The 6th November,* 1958

Surjit Singh Majithia was in the general election held in 1957 elected to the Parliament from the Tarn Taran Constituency in the District of Amritsar. The result of the election was declared on March 10, 1957. Dayal Singh, one of the unsuccessful candidates, filed on April 23, 1957, this election petition under Section 81 of the Representation of the People Act for declaring the election of Surjit Singh Majithia null and void and for directing fresh election according to law.

2. The petitioner had originally impleaded seven respondents. Respondent No. 1 was Surjit Singh Majithia. Respondents 2 to 5 continued to be contesting candidates till the last, while the remaining two (Respondents 6 and 7) had withdrawn before the poll.

3. On the first date of hearing before this Tribunal (July 22, 1957), the Respondent Surjit Singh Majithia filed his written statement. Paragraph 1 of the Preliminary objection in the Written Statement filed on that date was to the effect that Respondents 2 to 7 had been wrongly and unnecessarily joined as parties and as such their names should be struck off. Their presence would merely embarrass the trial and cause prejudice. The Petitioner also prayed for leave to strike out the names of the 6 candidates making consequential amendment in Paragraph 3 of the petition. This prayer also was not opposed by the said Respondent and was allowed. After this order had been passed, on the next date of hearing a preliminary objection was thereafter raised on behalf of the Respondent to the effect that as unnecessary parties had originally been impleaded by the Petitioner, the petition should be deemed not to have been in conformity with Section 82 of the Representation of the People Act and should accordingly be dismissed *in limine.* This objection was over-ruled. The grounds for such rejection will be given in this judgment under issue No. 1.

Unless otherwise indicated reference in this judgment if made about the respondent without any serial number, is to be taken to be to the original Respondent No. 1 Surjit Singh Majithia.

4. On the second date of hearing the Petitioner had asked for leave to furnish further and better particulars by amending portions of the Schedules attached to the Petition. This was objected to by the Respondent. After hearing both parties the prayer was allowed in part on September 6, 1957 [the said order appears in *Annexure I* to this judgment]. Schedule A to the Petition remains as originally filed. Certain changes were permitted in the other Schedules. For easy and convenient reference and on the prayer of the Respondent fresh copies of the Schedules to the Petition, in conformity with the directions contained in order dated September 6, 1957, was directed to be filed by the Petitioner. This was done on November 6 following after copies had been served on the Respondent. Opportunity had also been given to the Respondent to file an additional written statement. The Respondent chose to file a consolidated written statement incorporating points raised in the original written statement and additional defences as it was found necessary after the order dated September 6. This written statement also was filed on November 6, 1957.

5. The two following preliminary issues were on the prayer of the parties thereafter raised and heard:—

*Preliminary Issues*—

(1) Have the petition and the Schedules been properly verified? If not, what is the effect?

(2) Is the petition alongwith the amended schedules or any part thereof vague and indefinite? If so, should any part of the petition be struck off?

6 During the hearing of these preliminary issues it was pointed out on behalf of the Respondent that it had now transpired that the revised schedules as filed by the Petitioner on November 6, 1957, purporting to be in conformity with my order dated September 6, was not really so and they should be corrected. This objection was dealt with in my order No. 14, dated February 10, 1958 and some of the items in Schedule C to the Election Petition were further considered (*Order made Annexure II to this judgment*).

7. The two preliminary issues were also disposed of by another order passed on the same date (*Annexure III to this judgment*). Portions of the Election petition were deleted and the verifications were allowed to be put right.

8. After hearing the parties, the following nine issues were settled on the basis of the pleadings as they stood after the orders referred to above:—

*Issue No.* 1.—The petitioner having originally impleaded respondents 2 to 7 and whose names had been expunged subsequently as being unnecessary parties, is the petition to be deemed not to be in conformity with the provisions of Section 82 of the Representation of the People Act? If so, is the petition liable to be dismissed?

*Issue No.* 2.—Was Ram Chand in the pay of the Public Relations Office in the Punjab State's department and was he a polling agent of respondent as alleged in paragraph 4 read with item I of Schedule C of the Election Petition?

*Issue No.* 2(*b*).—If so, did this offend against Section 123(7) of the Representation of the People Act?

*Issue No.* 2(*c*).—If so, did this materially affect the election of the respondent?

*Issue No.* 3.—Was the name of the respondent wrongly written on the ballot boxes as alleged in paragraph 9 of the Election Petition? If so, was this against law and did this materially affect the election of the petitioner?

*Issue No.* 4.—Was there not sufficient publicity given to the symbols assigned to the different candidates as required under the rules? If so, did this materially affect the result of the election?

*Issue No.* 5.—Are the accounts submitted by the respondent wrong, false and underestimated as alleged in sub-paragraphs (i) and (iii) of paragraph 8 of the Election Petition taken alongwith items (i), (ii), (iv) and (v) of Schedule B annexed to the petition? If so, is the election of the respondent liable to be set aside on that ground?

*Issue No.* 6.—Was S. Beant Singh, a Sarpanch as alleged in item 3 of Schedule C to the Election Petition? If so, did this appointment by the respondent as a polling agent offend against the provisions of Section 123 of the Representation of the People Act? If so, did this materially affect the election?

*Issue No.* 7.—Did the Respondent threaten the voters mentioned in item 10 of Schedule C not to vote for the petitioner but vote for him? If so, did this materially affect the result of the petitioner's election?

*Issue No.* 8.—Was there a compromise between the Congress High Command and Master Tara Singh on behalf of the Akalis not to vote against the Congress in return of 23 seats being allowed to the Akalis? If so, did such compromise materially affect the result of the election if the same is relevant for consideration in the present proceedings?

*Issue No.* 9.—Is the petitioner entitled to any other relief?

9. When the Petitioner filed his list of witnesses to be examined, objection was raised by the Respondent about three of them—S. Kahan Singh, S. Gurmeeh Singh and Shri Jawahar Lal Nehru. Such objection was disposed of by order No. 21, dated March 26, 1958 (*Annexure IV to this judgment*).

10. The trial has proceeded on the basis of the pleadings as they stand after the additions and deletions as under the preliminary orders referred to above. Reference to be made hereafter in this judgment to the body of the election petition will be, unless specifically mentioned otherwise, to the election petition originally filed excluding the Schedules. Schedule A has been directed under my order dated February 10, 1958 to be deleted. For the altered Schedules B and C to the petition and the final written statement filed by the Respondent, reference will be made to those which were filed on November 6, 1957.

11. I now proceed to give a short resume of the allegations relevant for a decision of the issues now to be decided.

12. During the last general election held in 1957 for the Parliamentary seat from the Tarn Taran constituency the following is the list of candidates who were in the field till the last, with the number of votes obtained by each as stated by the Respondent and admitted by the Petitioner:—

| | *Votes polled* |
|---|---|
| 1. Surjit Singh Majithia (*Respondent*) | 1,29,435 |
| 2. Dalip Singh Tapila | 85,217 |
| 3. Jamna Das Aurora | 17,665 |
| 4. Dalip Singh of Ghariala | 14,905 |
| 5. Dildar Singh | 10,275 |
| 6. Dyal Singh (*Petitioner*) | 6,356 |

Mota Singh and Gurwaryam Singh, who also had been candidates had withdrawn on February 4, 1957. The results having been declared on March 10, 1957, the present Election Petition was filed on April 23, 1957 by Dayal Singh. The requisite security deposit under section 117 of the Representation of the People Act was duly deposited and the Treasury chalan was filed along with the petition.

12 The grounds as taken by the Petitioner in support of the prayer and as they fall to be decided now—may be grouped as follows:—

I. That the Respondent Surjit Singh Majithia had been guilty of corrupt practices by obtaining either himself or through his election agent the assistance of the two following persons who were alleged to be in the service of Government and to be included within the categories mentioned in sub-section (7) of Section 123 of the Representation of the People Act, as polling agents:

(a) Ram Chand alleged to be in the pay of the Public Relation Office, Punjab. was appointed as Polling agent of the Respondent in Polling Booth Patti.

(b) Beant Singh, Sarpanch of Village Ardhang, Tehsil Ajnala was appointed as Polling Agent of the Respondent in Polling Booth Chogawan, tehsil Ajnala.

II. The Return of Election Expenses as filed by the Respondent was wrong, false and underestimated in material particulars in as much as:

(a) the rates of hire of jeeps and lorries were much higher than as shown,

(b) Langars for the election workers had been run by the Respondent, during the election period but the expenses therefor had not been included in the Return of Election Expenses,

(c) Man Singh, Bachittar Singh and Mangal Singh had been working for the Respondent, but payments to them were not included in the Statement of accounts filed as Return of Election Expenses.

If such items of expenditure were included that would make the expenses incurred by the Respondent exceed the statutory limit of Rs. 25,000/-.

III. There had been non-compliance with some of the provisions of the Representation of the People Act and Rules and orders thereunder in the following respects—

(a) The name of the Respondent as appearing on the Ballot Boxes was wrong—Sardar Surjit Singh Majithia instead of Sardar Surjit Singh only.

(b) Sufficient publicity had not been given to the symbols assigned to the different candidates. Such irregularities had materially affected the result of the election.

IV. The Respondent had threatened petitioner's voters in the polling camps of Fatehabad and Khawaspur not to vote for the latter and to vote for the former. The result of the election had been materially affected thereby.

V. There had been a compromise between the Congress High Command and Master Tara Singh on behalf of the Akalis not to vote against the Congress in return of 23 seats allowed to the Akalis. Such compromise had materially affected the result of the election.

13. The defences raised on behalf of the Respondent were in the main—

I. (a) It is denied that Ram Chand was either a person in the service of the Government, coming within the mischief of Section 123(7) of the Representation of the People Act or a polling agent as alleged. Even if the allegations be proved no corrupt practice was committed.

(b) Even if Beant Singh is proved to have been a Sarpanch, such an office was not included within Section 123(7) of the Representation of the People Act. His appointment as a polling agent would neither infringe any law nor constitute any corrupt practice.

II. (a) The Return of Election Expenses as filed by the Respondent was correct and accurate. The Respondent had not actually incurred any expenditure by way of hire charges for the jeep and weapon carriers used during the election. They had been made available to the Respondent free of all charges by Saraya Sugar Factory which was a family concern of the Respondent subsequently formed into a Joint Stock Company. The national rates as given in the Return are the reasonable rates for hire of such vehicles. To show the bonafides of the Respondent the notional hire of such vehicles had been shown in the return. Even if such notional figures were included within the total, it would not be in excess of the maximum fixed under the statute and the Rules thereunder.

(b) The opening and running of Langars as alleged are denied.

(c) It is denied that Man Singh was a paid worker of the Respondent, or that any payment had been made to him. Bachittar Singh and Mangal Singh are not even known to the Respondent or his Election Agent and it is denied that they had worked for the Respondent during the election or that Mangal Singh had been working on a pay of Rs. 100/- per month.

III. (a) The name of the Respondent as appearing on the Ballot Boxes was the same as in the electoral roll.

(b) The allegation about the non-publication of the symbols is denied.

IV. The Respondent denies the allegations made about threatening the voters as alleged.

V. The alleged compromise between the Congress High Command and Master Tara Singh is denied and it is contended that the allegation does not constitute the commission of any corrupt practice and is irrelevant for an enquiry in the present proceedings.

*Issue No.* (1).

14. As already indicated the Petitioner had in the original petition impleaded not only the successful candidate Surjit Singh Majithia, but 6 other candidates as Respondents 2 to 7, amongst the later group being persons who had either been unsuccessful in the election or had withdrawn from the contest. The Respondent had in the original written statement filed on July 22, 1957, taken the objection that "Respondents 2 to 7 have been wrongfully and unnecessarily joined as parties, and as such their names should be struck off. Their presence merely embarras the trial and cause prejudice".

15. The Petitioner on the same day when the written statement had been filed prayed for the deletion of the names of Respondents Nos. 2 to 7 from the cause title with consequential amendment in paragraph 3 of the election petition. The Respondent's counsel did not oppose the prayer and the same was allowed on July 25, 1957. On the next date of hearing, namely, August 10 1957 objection was raised on behalf of the Respondent to the effect that the inclusion of such unnecessary parties in the original petition had the effect of making the petition not being in conformity with Section 82 of the Representation of the People Act with the result that the petition was liable to be dismissed under sub-section (3) of Section 90 of the said Act. Such an objection had subsequently been included in the revised written statement filed on November 6, 1957.

16. There is no substance in this objection. Section 82 of the Representation of the People Act lays down who are necessary parties in an election petition. Clause (a) of Section 82 of the Act makes it clear that when there is the prayer for a simple declaration that the election of all or any of the returned candidates is void only all the returned candidates are to be made parties. On the other hand, if in addition to the above prayer the Petitioner further prays for a declaration that he himself or any other candidate has been duly elected "all the contesting candidates other than the petitioner" must be joined as Respondents.

17. The present election petition falls under the first category above mentioned. The Petitioner need, therefore, have made only the returned candidate a party respondent. He had, however, impleaded the other contesting candidates. Was this a fatal defect or a mere surplusage?

18. Section 85 of the same Act lays down that the Election Commission on receiving the election petition shall dismiss it "if the provisions of Section 81, or Section 82 or Section 117 have not been complied with". Similarly in sub-section (3) of Section 90 of the said Act, it is provided—

> "The Tribunal shall dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117 notwithstanding that it has not been dismissed by the Election Commission, India, under Section 85".

Reliance is placed on behalf of the Respondent on the penal provisions of sub-section (3) of Section 90 and it is submitted that the penalty clause is attracted either when all the necessary parties are not impleaded or when any party who is unnecessary is included.

19. In *Jagannath* v. *Jaswant Singh*, 9 E.L.R. 231 the Supreme Court was called upon to consider whether failure to implead all the parties necessary as under Section 82 of the Act was a fatal defect entailing a dismissal of the petition. In view of the fact that under the then (pre-1956) provisions of Section 90(4) of that Act no penalty was provided for non-compliance with Section 82 the election petition could not be dismissed *in limine*. The Court reserved its final opinion on matters specifically covered by Sections 81, 83 and 117 of the Act. For determining whether a particular provision was manadatory or directory one has to examine

whether any penalty was provided for its non-compliance and also whether there was a general power of the Court to cure the defect At the time when the above decision was made, Section 82 was not mentioned either in the penal Section 85 or in the analogous provision which is now sub-section (3) of Section 90 [which was then sub-section (4) of the same Section]. The unamended provisions before 1956 provided for the dismissal of the petition by the Election Commission (under Section 85) and by the Election Tribunal under Section 90(4), if the provisions of Section 81 or 83 or 117 had not been complied with. After the 1956 amendment Section 82 has been substituted for Section 83 in the penal provisions of what is now Section 90(3) of the Act. The present provisions as in Section 85 and Section 90(3) are, according to the test laid down by the Supreme Court, of a mandatory character. While interpreting the implications of the expression "contesting candidates" as appearing in clause (a) of Section 82 after the 1956 amendment the Supreme Court has in *Kamaraja Nadar* v. *Kunju Tevar*, *Mariappam* v. *V. R. Nedunchezhiyam* (Civil Appeals 763 and 764 of 1957) recently on April 22, 1958 laid down that all candidates, excluding those who had withdrawn under Section 37(1) of the Act are to be included in the category of Respondents in the contingency referred to in the first part of clause (a) of Section 82 and non-compliance thereof will entail dismissal of the petition under Section 90(3) of the same Act. A candidate who has given notice of retirement from the contest under Section 55A(2) of the Act continues to be a "contesting candidate" under Section 90(3) of the Act. In this case also the point in issue was the effect of a *nonjoinder* of necessary parties. The Court was not considering the consequences of a *misjoinder of unnecessary parties. It was also held that the defect in the constitution* of the suit due to non-joinder could not be made good by adding the absent parties through the exercise of the powers of amendment of pleadings.

20. The only question, therefore, which need engage our attention is that whether the *rigours* of the provisions of Section 90(3) are equally applicable in the case of a misjoinder as in the case of a non-joinder of necessary parties. In the case of a non-joinder of a necessary party, the application itself is not properly framed and the Court is not in a position to grant the relief as the application is not properly constituted. In the case of a misjoinder of parties, in my view the defect is not fatal to the maintainability of the application. In such a case the Tribunal can grant relief—if the necessary facts and conditions are satisfied against the proper and necessary party and dismiss the petition against those unnecessarily impleaded. In the present case no relief had been prayed for against those originally impleaded as Respondents 2 to 7 No doubt the provisions contained in Order 1 Rule 10(2) of the Code of Civil Procedure entitle a Civil Court to strike out the names of persons improperly joined and to allow the suit to proceed. Is this power affected by any specific provisions on the special Election Law as in the Representation of the People Act? The provisions contained in Rule 9 of Order I of the Code of Civil Procedure, at least so far as they refer to the rectification of a defect of nonjoinder are not applicable to proceedings under the Representation of the People Act. Nor are the provisions as in Order 23 rule 1 of the Code permitting the petitioner to withdraw or abandon a part of his claim attracted after an election petition is presented to the Election Commissioner. In a *mati Malappa Basappa* v. *Desai Basarraj Ayyappa*. [Civil appeal No. 76 of 1958 before the Supreme Court]. Under sub-section (1) of Section 90 of the Representation of the People Act the provisions of the Code of Civil Procedure applicable to the trial of suit can be attracted always subject to the provisions of the same Act and of rules thereunder.

21. Reference was made by the Supreme Court in both the cases above cited to the following principles enunciated in *Jagan Nath* v. *Jaswant Singh* 1954 S.C.R. 895 "An election contest is not an action at Law or a suit in equity but is a purely statutory proceeding unknown to the Common Law and that the Court possess no Common Law powers.

* * * * * * *

"It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that Law is also to safeguard the purity of the election process and also to see that the people do not get elected by flagrant breaches of that Law or by corrupt practices."

Reliance was also placed on the observations of Morris J. in the *Tipperasy case* 3 O'mally and Hard Castle Reports 19(23)—

> "A petition is not a suit between two persons but is a proceeding in which the constituency itself is the principal party interested"

22. Although the Supreme Court came to the conclusion in *Kamaraja Nadars* appeal (*Supra*) that the provisions of Section 90(3) of the Representation of the People Act were of a mandatory nature and a Petition was liable to be dismissed for non-joinder of the necessary parties, in Civil Appeal 48 of 1958 (*M. R. Masani* v. *Election Tribunal, Ranchi*) a literal and very strict compliance with the provisions of section 117 was not insisted upon. It is worthy of note that the penal provisions of Section 90(3) of the Act are attracted for non-compliance with the provisions of all the three Sections 81, 82 and 117. For weighty, and, if I may say with respect, very congent reasons, sufficient compliance, and not a literal and strict compliance was held to be sufficient in the case of the security deposit under section 117 of the Act to be in the name of the Secretary of the Commission. Those words used in Section 117 were declared to be mearly directory and not mandatory.

23 By applying the tests adopted by the Supreme Court in regards to the provisions of Section 117 of this Act I hold that though the provisions of Section 82 requiring the inclusion of all the "contesting candidates" as party respondent in the contingency mentioned therein are of a mandatory nature, the addition of unnecessary parties does not make the petition not maintainable. There would be a sufficient compliance if all the necessary parties are impleaded and even though unnecessary parties are included.

24. This interpretation is not inconsistent with the spirit of this special Act. Take the case of an election petition in respect of a double-member constituency. Both the elected members are required under section 82 of the Act to be impleaded even when the only relief asked for is for declaring the election of one of the two returned candidates to be void and on grounds which do not in any way affect the other returned candidate. No relief need be prayed for against the other returned candidate. The statute requires both such candidates to be impleaded so that the decision may be made in the presence of all the successful candidates. Presence of the other candidate does not in any way create any difficulty or defect of multifariousness If alongwith such a returned candidate who is not affected by the result of the proceeding, even when the petition succeeds as against one of the candidates, if other nominated candidates are also impleaded such additional names will not in any way affect the jurisdiction of the Court though there may be some defect as to multifariousness– but that cannot be fatal.

25 In the present case, simultaneously with a prayer made by the Petitioner to delete the names of the unnecessary Respondents, the successful candidate, namely the contesting Respondent, also made the same prayer and the Petitioner's application was allowed without opposition In my view the rigours of sub-section (3) of Section 90 will not be attracted in the case of misjoinder of parties in the same way as in the case of non-joinder of necessary parties. This issue is decided in favour of the Petitioner.

*Issues Nos.* 2, 2(*a*), 2(b) *and* 2(c).

26. Under issue No 2 we have to determine two questions of fact and if such facts are found in favour of the Petitioner, then under the other issues the question will be what would be the legal effect thereof on the election In paragraph 4 of the Election Petition read with item 1 of Schedule C, it is alleged that one Ram Chand, son of Gopi Chand of Fatehabad though in the pay of the Public Relations Office, Amritsar, had been engaged on behalf of the Respondent as a polling agent at polling booth Patti. The Respondent denies that Ram Chand was in the pay of the Public Relations Office or even if so that he is a Government Officer coming within the mischief of sub-section (7) of Section 123 of the Representation of the People Act. It is also denied that Ram Chand had either been appointed or had acted as a polling agent at Patti.

27. The Petitioner has examined one Ram Chand son of Gopi Chand of Fatehabad as P W -5. He claims to be working in the office of the District Public Relations Officer, Amritsar as a Rural Publicity worker. In the examination-in-chief in answer to question No. 4 he had pleaded his ignorance as to whether the Public Relations Officer's office was a government officer or that the pay received by him was being drawn from the Public treasury. He received his salary from a clerk in the office of the District Public Relations Officer, Amritsar. His duty is to publicise government schemes and activities In answer to question No. 12, however, as to whether he had acted as a polling agent for Respondent Majithia, during the last election he answered in the negative The Petitioner had called for from the Returning Office the form for the appointment of polling agents under which, Bishan Singh, R.W -11 who was the election agent of the Respondent had signed that form for polling station Patti. Bishan Singh R W -11 the Election Agent of the Respondent admitted his signature on this paper to be his (Exb.

P-2) but denied having appointed Ram Chand by that form. The form had not, however, been fully filled in. The blank space where the name of the polling agent is to be put in by the candidate or by his election agent was never filled in. The signature of the person appointed as polling agent (just below the signature of the election agent making the nomination) or, the polling agent's signature after the declaration signed before the Presiding Officer are illegible scriblings. It is significant that this piece of paper with a signature, which is alleged by the Petitioner to be that of Ram Chand, was not placed by the Petitioner during the examination in chief of his own witness Ram Chand during his examination as P.W.-5. The Respondent and his election agent R.W.-11 deny that Ram Chand had been appointed or that he had acted as a polling agent for the Respondent.

It is also significant Ram Chand himself denies in answer to Question 12 that he had at all acted as the polling agent of the Respondent.

28. On such materials it is impossible to hold that the Petitioner has proved that Ram Chand was a polling agent for the Respondent at Patti or that EXB. P-2 is the appointment form by which he had been nominated. In this state of the evidence, it is not necessary to decide whether Ram Chand had been proved to have been a government officer coming within the mischief of sub-section (7) of section 123 of the Act Mere allegation in the petition that Ram Chand was the polling agent in the face of denial by Ram Chand himself, a witness called by the Petitioner and the denial by the Respondent and his election agent does not at all prove the Petitioner's case. It has been criticised by the Petitioner that it was within the knowledge of the Respondent to say who was his polling agent at Patti and in that line the Respondent and his agent had been cross examined. The onus being on the Petitioner to show that the Respondent had engaged a person as a polling agent, who was not entitled to be so appointed, it is not open to the Petitioner to find fault with the conduct of Respondent in not helping him with necessary materials. Dayal Singh, the Petitioner has no personal knowledge about this matter. His source of information about the Polling agent at Patti is, as stated by him in answer to question No. 5 that Dalip Singh, a communist candidate for the Parliamentary seat had given him the information on which the allegation in the Petition was based. That is pure and simple hearsay.

29. I may add that even if it had been proved that Ram Chand had acted as a polling agent of the Respondent on the materials now before me it cannot be held that Ram Chand was one of such Government officers as would come under sub-section (7) of Section 123 of the Act. The result, therefore, is that this issue must be found against the Petitioner on both the questions of fact. Neither Issue No. 2(b) nor 2(c) accordingly need be considered. As a matter of fact, if Issue No. 2 had been found in favour of the Petitioner the Respondent would have committed a corrupt practice and issue No. 2(c) would have been unnecessary.

*Issue No.* 3

30. Under this issue it is required to be considered whether the name of the Respondent had been wrongly written on the ballot boxes as alleged in paragraph 9 of the Election Petition. If so, was this against law and did this materially affect the election of the Petitioner?

31. The Respondent has produced copy of an entry of his name in the electoral roll (Exb. R-2). In the Supplementary list No. I of 1956 to the Electoral Roll under serial No. 192, the name of the Respondent is 'Surjit Singh Majithia' and not simply 'Surjit Singh' as contended by the Petitioner. The name on the ballot boxes was as in the electoral roll. This issue was not pressed and is found against the Petitioner.

*Issue No.* 4

32. The Petitioner had alleged in the Election Petition that there had not been sufficient publicity given to the symbols assigned to the different candidates as required under the rules. No evidence was adduced by the Petitioner in support of such a contention, and the learned counsel for the Petitioner did not ultimately press this issue. This issue is found in favour of the Respondent as the fact alleged by the Petitioner is not proved.

*Issue No.* 5

33. This issue relates to the return of election expenses filed by the Respondent. It is contended on behalf of the Petitioner that under sub-section (6) of Section 123 of the Representation of the People Act, incurring or authorising

of expenditure in contravention of Section 77 is deemed to be a corrupt practice. Section 77 of the same Act is in the following terms:

"77. *Account of election expenses and maximum thereof.*—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.

"(2) The account shall contain such particulars, as may be prescribed.

"(3) The total of the said expenditure shall not exceed such amount as may be prescribed."

The relevant provisions as contained in the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, are contained in Part III of the said rules under the heading 'Election Expenses'.

34. The contraventions pleaded by the Petitioner may be sub-divided under three heads—

(a) The Respondent had used for election purposes a number of jeeps and lorries during the election period. Such vehicles are alleged by the Respondent to belong to the Saraya Sugar Factory, Sardarnagar, District Gorakhpur (U.P.). The said concern was at the time of the election in the nature of a partnership and the Respondent was then a Managing Partner. Now it is a Private Limited Company. The Respondent holds a four annas four pies share. The vehicles are alleged to have been placed at the disposal of the Respondent by the said Sugar Factory for which no hire was charged The Respondent, however, had in two notes appended to the return of election expenses indicated a notional hire charge of the jeeps at Rs. 20 per day and of the weapon carriers at Rs. 25 per day. These were considered by him to be the reasonable rates in addition to the price of petrol and mobil oil used for those vehicles for the period, as also the repair charges paid for two of the weapon carriers. According to the Petitioner the proper hire charges for these vehicles would be much higher than the rates mentioned above and such hire charges should be included within the election expenses of the Respondent for determining whether he had exceeded the limit laid down under rule 135(1)(b). If the rates suggested by the Petitioner be accepted and the hire charges of the vehicles are held to be items which must be included within the return of election expenses, the total amount would exceed the maximum limit fixed under the said rule.

(b) The Petitioner alleges that the Respondent had opened and maintained during the election period a number of langars (free kitchens) where his workers were given free food. The Petitioner alleges that the total amount spent for the running of these langars could not be less than Rs. 14,000, but this entire amount had not been included in the return of election expenses

(c) Three persons Man Singh, Bachittar Singh and Mangal Singh are alleged to have had worked for the Respondent, but their salaries had not been debited in the return of election expenses.

35. I shall now proceed to consider each of these allegations under the three sub-heads with reference to the evidence adduced and the relevant questions of law.

36. (a) *Use of Jeeps and Weapon Carriers.*—The return of election expenses filed by the Respondent has been marked as Exb. R-6 and the vouchers attached therewith are Exb. R-7 series. The Petitioner had also called for the original accounts maintained by the Respondent and his Election Agent. The set of original accounts also had been produced and marked as Exb. P-1 and marked again as Exb. R-5. From and examination of the depositions of the Petitioner, the Respondent and the Election Agent Bishan Singh, there is no room for doubt that the Respondent had used three jeeps and 4 Weapon Carriers during the election period. The period for which they had been used and as stated by and on behalf of the Respondent has not been seriously questioned. The Respondent's allegation that these motor vehicles belonged to the Sarya Sugar

Factory was not admitted by the Petitioner. That those belonged to that Sugar Factory as also the fact that their use had been permitted by the factory have been testified by R.W-3 and R.W-11 examined on behalf of the Respondent. But it is argued on behalf of the Petitioner that there is no written authority produced from the Factory either to show that these vehicles belonged to that factory or that they had been permitted to be used by the Respondent and that no hire charge had been debited against the Respondent in the accounts of the firm. It was further contended that it being an admitted fact that certain specific motor vehicles had been used by the Respondent for election purposes it behoves upon him to satisfy the Tribunal why their normal hire charges should not be included, or, to show that no expenses were incurred by him for getting their use. All these facts were further within the special knowledge of the Respondent and it was possible for him and him alone to adduce conclusive evidence that these vehicles belonged to the Sugar Factory and that their free use had been permitted. From the trend of the examination of the witnesses and the final arguments it may be asserted that the Petitioner ultimately reconciled himself to the position that the vehicles did belong to the Sugar Factory. The principal contention, as urged during the arguments, was limited to the three following points:--

(i) In the absence of any direct and positive proof that the Sugar Factory had permitted the free use of these vehicles, the Tribunal ought to presume that the Respondent had not their free use; and

(ii) in any view, as the vehicles according to the Respondent belonged to the Sugar Factory, in which persons other than the said Respondent were interested as proprietors;

(iii) or, even if the vehicles be at best be considered to have belonged to the Respondent to the extent of the share held by him in the Factory, rent at the market rate in respect of the share of persons other than the Respondent must be included in the Respondent return of Election Expenses.

For either of the two latter alternative methods of calculation the full market rate has to be ascertained and there is no room for a notional rate being merely appended in a note to the Return.

37. After giving due consideration to the evidence as adduced by the Respondent, I do not see any reasons as to why the statements made by the Respondent himself, who was at the relevant time the Managing Partner of the concern, should be disbelieved. The veracity of the Respondent, his election agent and certain employees of the factory, who worked for the Respondent during the election period and examined in this case, has not been shaken. It is true that on the case as made by the Respondent about the ownership of the motor vehicles used by him, it was upto him to explain why the hire charges should not be included in the Return. On the evidence adduced, though not very satisfactory, and from the surrounding circumstances about the constitution of the concern that I find the story set up by the Respondent in this part of the case, to be more natural and probable. The Petitioner has not adduced any dependable evidence to the effect that any rent had been assessed or charged. The evidence as attempted to be introduced on the statement made by P.W-7 Janmeja Singh cannot be accepted. I shall discuss more fully the nature of that evidence when I consider the evidence as to the prevailing market rate. I hold that no payment was actually made or expenses incurred by the Respondent for these vehicles, except for the price of the petrol used and repairs found necessary—which items have been included in the Return.

38. I shall now take up the second and the third alternative arguments advanced even if it be held that a proper market rate should be taken into consideration we have to consider whether sufficient materials have been placed before me to determine such market rate As regards the prevailing market rate we have the evidence of one of the witnesses (P.W-7) on behalf of the Petitioner and of the Petitioner himself. On behalf of the Respondent rates notified by the Election Department for requisitioning on behalf of the Government motor vehicles for election purposes has been filed. The Respondent has attempted to justify the notional rate but does not know what the market rate was. Janmeja Singh P W-7 states that he had worked for the Respondent Surjit Singh Majithia during the election period. He states that the Respondent had hired jeeps and other motor vehicles at Rs. 50 to Rs. 70 per vehicle per day. His source of information is that all the workers for the Respondent together had given him that information. Amongst such persons named, are Nahar Singh and Harcharan Singh, who were alleged to have been the other workers of the Respondent. Janmeja Singh alleges he had worked for the Respondent not for any monitary consideration, but

because he was a member of the Congress; he has now left that party. In course of cross-examination, it was put to this witness by the Respondent, that the former had actually worked for the petitioner Dayal Singh, during the 1957-election and not for the Respondent. He stoutly denied this and referred to the fact that in his village Pindian, except a few stray votes, all the rest were cast in favour of Respondent Majithia. Although in the examination-in-chief he had mentioned that the hire charges was Rs. 50 to Rs. 70 per vehicle, during the cross-examination he stated that the information given by Nahar Singh was to the effect that the 'expense' for a jeep was Rs 50 per day and for a lorry Rs. 60 or Rs. 70. By the expression 'expense' he then explained he had included hire money and petrol. It is, however, the Respondent's case that petrol used on these vehicles was paid for by the Respondent. This witness attempted to explain away the answer previously given, when he referred to the talk with Harcharan Singh. He corrected himself by saying that the hire for jeep is Rs. 50 *excluding* the expense for petrol. This hire for lorry was stated to be Rs. 60 to Rs. 70 per day. Apart from such serious contradictions by him reference has to be made to the latter part of his cross-examination where his connection with the Petitioner and particularly with Ravisher Singh son of the petitioner are referred to. Although in the beginning the witness tried to evade direct and correct answers he had to admit later on and there is no room for doubt in my mind that he is a witness who now is and also had been intimately connected with the Petitioner's family and was also associated with them in connection with Court proceedings. It is not safe to depend upon the evidence of such a witness for determining what the market rates for hire of motor vehicles were. Further his source of information about such rates is what other people had stated to him. He has no direct and first-hand knowledge of such rates which can be relied upon. Such hearsay evidence also is not of any consequence.

39. The Petitioner's own statement as P.W-8 may also be referred to. He has stated that though the Respondent had given the hire charges of jeeps and other vehicles at Rs. 20 and Rs. 25 per day, the market rate was Rs. 50 per day for a jeep and Rs. 60 or Rs. 70 per day for other vehicles. He owns no motor vehicle. He has had no occasion either to take on hire or to hire out a motor vehicle during the election period His source of information is that he had made enquiries from Sandhu Bus Service for lorries and for cars from a shed opposite the Railway Station at Amritsar—a shed where taxis are available for hire. On an enquiry at that place and without engaging any car or jeep or lorry he was told by others that the rate was as mentioned by him. He should have got somebody to appear as witness from the Sandhu Bus Service or from any other person who owns jeeps or lorries and hires them out. The Petitioners' statement is based on information obtained from others and such evidence also is secondary evidence on which no decision can be made. As against such evidence the Respondent has produced copy of a circular letter marked as EXB. R-4 issued by the Chief Secretary to Government, Punjab, wherein the Government of Punjab fixed certain rates of hire of different types of motor vehicles as might be requisitioned by the District authorities in the Punjab for use during the last general elections and bye-elections to the Union and State legislatures. The hire charge for a jeep is stated there to be Rs. 10/8 per working day and Rs. 8 for a non-working day. Petrol and Mobil Oil to be supplied by the Government and the owners to provide their own drivers and cleaners. 1½ ton trucks are to be requisitioned for Rs. 20 and Rs. 10 per working day and non working day respectively. It has been argued with some justification on behalf of Petitioner that the rates as mentioned in this circular are rates for requisition as ordered by the Government, but there is no evidence to show that such rates were accepted by the owners or that such rates were the prevailing market rates at which private parties could get motor vehicles on hire during the heavy demands of the election period. The Election Agent of the Respondent has stated that the note appearing at the end of the Return of Election Expenses which were the notional rates for these motor vehicles had been incorporated according to the instructions by the Respondent himself. The Respondent also in course of his deposition took upon himself the responsibility about the particular rates mentioned. He could not however indicate the basis on which such rates had been fixed by him in the return of election expenses. He merely stated that such rates as were considered by him to be fair and reasonable were mentioned.

40. The nature of the evidence on the question of market rates as adduced by both the parties, is as indicated above. The Respondent has mentioned in the return only certain notional rates for the use of the vehicles The Petitioner has stated that the prevailing market rate was much higher. Neither the Petitioner nor the Respondent has adduced substantial and reliable evidence as to the then

prevailing market rates. On such evidence, therefore, it is not possible to determine any definite market rate for these types of motor vehicles. Jeeps are in common use; weapon carriers however, were purchased from the Disposals after the last war and from the evidence as adduced on behalf of the Respondent it appears that weapon carriers are similar to lorries and they are much smaller vehicles than 1½ ton lorries. On behalf of the Respondent, no attempt was made to adduce any evidence about the market rate for weapon carriers. The conclusion reached as indicated already, is that the materials in the record are not sufficient to arrive at a fair market rate prevailing then. If on the other hand the answer be in the negative and no entry is required to be made in the Return the absence of evidence as to the market rate will not be of any consequence. If the decision is that proper market rates were to have been included by the Respondent for the use of such motor vehicles, it will be necessary to consider on whom the onus lay to prove the market rate and what would be the legal effect of the non-inclusion of such items in the return of election expenses.

41. After the conclusion reached by me that Respondent No. 1 had not been required to pay any thing to the Sugar Factory for the use of the motor vehicles I have now to consider whether the Respondent was required under the law to include in his return of Election expenses any figure for the estimated hire charges. If the answer be in the affirmative is that amount to be on the basis of the then prevailing market rate, or any notional amount? It will also be necessary to consider whether in such case the full amount of the total hire chargeable or only the share payable (if charged) to the co-owners of the Factory, other than the Respondent

42 Reliance was placed on behalf of the Respondent on the decision of the Supreme Court *Ranajaya Singh* v. *Baijnath Singh* (1954) 10 E.L.R. 129. At the very outset it must be pointed out that this decision of the Supreme Court was on the relevant provisions of the Representation of the People Act, as they stood before the 1956 amendment and when there were two sets of corrupt practices, some major and some minor. It was also at a time when the statute fixed the maximum number of different types of workers who could be engaged by a candidate for a particular election Reliance, however, is placed on certain principles enunciated by the Supreme Court about assistance obtained by the candidate of persons who had been serving under the father of the candidate and in respect of whom no remuneration had been paid by the candidate himself. Before I deal further with the observations of the Supreme Court, reference need be made to the specific provision as contained in sub-section (7) of section 123 of the Act—as it stood *before the* 1956 *amendments*—which made

> "(7) the incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule made thereunder" a corrupt practice.

43. Rules 117 and 118 of the Representation of the People, Rules (1951) were at that time in the following terms—

> "117. *Maximum Election Expenses.*—No expense shall be incurred or authorised by a candidate or his election agent on account of or in respect of conduct and management of an election in any one constituency in a State in excess of the maximum amount specified in respect of that constituency in Schedule V"

> "118. *Number of persons who may be employed for payment in connection with Elections.*—No person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election."

Schedule VI referred to in rule 118 above opened with the words "Persons who may be employed for payment by candidates or their election agents in connection with elections"

44. Section 77 of the Representation of the People Act *as it then stood* was in the following terms—

> "77. *Maximum Election Expenses, etc.*—The maximum scales of election expenses at elections and the number and descriptions of persons who may be employed for payment in connection with elections shall be such as may be prescribed."

45. The following passage appearing in the judgment of the Supreme Court in *Rananjaya Singh* v. *Baijnath Singh* (1954) 10 E.L.R. 129 (at p. 132) brings out the effect of the above provisions on the question now for consideration in the present case:—

> "The learned advocate appearing for the respondent frankly and properly conceded that he could not support this part of the finding of the Tribunal [that although the estate belonged to the father of the appellant, nevertheless, as the appellant was the heir apparent and actually looked after the estate on behalf of the old and infirm proprietor, these "servants" of the estate were "virtually" his "own" servants and could properly be regarded as having been employed for payment by the appellant]. He, however, contended, relying on the language used in Section 77, that if the number of persons who worked for payment in connection with the election exceeded the maximum number specified in Schedule VI, the case fell within the mischief of the relevant sections and the rules, no matter who employed them or who made payments to them. It is true that section 77 uses the words "who may be employed for payment" without indicating by whom employed or paid but it must be borne in mind that the gist of a corrupt practice as defined in section 123(7) is that the employment of extra persons and the incurring or authorising of excess expenditure must be by the candidate or his agent. The provisions of rules 117 and 118 are to be read in the light of this definition of a corrupt practice.
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> * * * * *
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> Section 77 must, therefore, be read in a manner consonant with section 123(7) and rules 117 and 118. * * * There can be no doubt that in the eye of the law these extra persons were in the employment of the father of the appellant and paid by the father and they were neither employed nor paid by the appellant. The case, therefore, does not fall within section 123(7) at all and if that be so, it cannot come within section 124(4)".

Reference in this connection was made by the Supreme Court to the observations in *Joseph Forster Wilson* v. *Christopher Furness* 6 O'M & H.1(6). On this line of reasoning the Supreme Court came to the conclusion that the persons whose services had been availed of, were obviously the servants of the father and assisted the son in the matter of the election. Such persons assisted the son in connection with the election at the request of the father which strictly speaking they were not obliged to do. They were in the position of volunteers. These persons were neither employed nor paid by the son, the candidate. Employment of volunteers does not bring the candidate within the mischief of the definition of corrupt practice as given in Section 123(7) as it then stood

46 On the authority of this decision the Counsel for the Respondent urged the acceptance of the proposition that the use of the motor vehicles in the present case was in the nature of such volunteers placed at the disposal of the candidate by the Sugar Factory. Will the admitted fact that the Respondent in the present case was not the full owner of the vehicles affect the application of the principles laid down by the Supreme Court?

47. In this connection reference was also made by the Respondent to the principle enunciated by the Tanjore Election Tribunal in *M. R. Meganathan* v. *K. T. Kosalram* 9 E.L.R. 242 on pages 270-271. It had been contended on behalf of the Petitioner in that case that when a candidate used his own car a reasonable hire of the cars should be shown as election expenses. This argument was rejected with the observation that when one uses one's own car there is no hiring and no payment of hire and there is, therefore, no question of the amount of hire being included in the return. How far will such reasoning be relevant in the present case when the Respondent is not the sole owner, but he is at best a part owner. Why should not a notional hire charge be included in the return? To this the answer given is that a notional hire has been indicated in the return of election expenses. In the absence of evidence about the proper market rate and the Respondent being a part owner of the vehicles, nothing except a notional charge can or could be indicated.

48. Let us now consider the implications of the decision of the Supreme Court with reference to the post-1956 amended provisions of the Act and the Rules. While considering the applicability of the then provisions in Sections 77 and 123(7)

of the Act about the limit of number of persons to be appointed in furtherance of the election emphasis was laid on the question whether the persons had been *employed and paid by the candidate*. Chapter VIII of Part VI of the Representation of the People Act deal with Election Expenses. All the three sections (Sections 76 to 78) in this Chapter were materially altered in 1956 to give effect to the new idea that there should be only one and not two grades of corrupt practices and the number of persons to be engaged was not to be limited. It will be noticed that in Section 77(1) of the Act as it now stands the account is to be kept "of all expenditure in connection with the election *incurred or authorised by him* or by his election agent."

Under the present Rules as contained in Part III of the Conduct of Elections and Election Petitions dealing with Election Expenses the candidate is to keep the account of election expenses "*incurred or authorised*" (Rule 131). Sub-section (6) of Section 123 of the Act makes the "*incurring or authorising* of expenditure in contravention of Section 77" a corrupt practice. Thus the provisions of Sections 77(1) and 123(6) taken alongwith Rule 131 make it abundantly clear that the penal provisions are attracted only when expenses have had been actually *incurred*. This interpretation is in consonance with the principles adopted by the Supreme Court in 10 E.L.R. 129. The observations by the Tanjore Tribunal in 9 E.L.R. 242 (271) about reasonable hire of cars to be included whether hired or not must be held not to be binding after the Supreme Court decision. In the facts of the case now before me if the story as given by the Respondent and his election agent be believed, and I see no reason to disbelieve that no hire charge was demanded by the Sugar Factory or actually paid by the Respondent, no expenditure was *incurred* by the Respondent or his election agent for the use of the motor vehicles. In this state of the legal position it becomes immaterial whether the Respondent was the sole or part owner of the vehicles. No notional rate of hire charges is required to be included in the Return of Election expenses when no expenditure was incurred. It is also not necessary to consider further what the actual market rate was and what would be the effect of neither the Respondent nor the Petitioner adducing sufficient evidence to prove the market rate. Exclusion of market rates of hire charges of these motor vehicles does not bring the Respondent within the mischief of Section 77 read with Section 123(6) of the Representation of the People Act.

49. (b) *Opening of Langars.*—The Petitioner's case is that the Respondent had opened a number of *langars* or free kitchens during the election. As will appear from my preliminary orders previously made the petitioner had at different stages made attempts to include or to exclude places where *langars* had been originally alleged in the election petition to have been opened. In paragraph 3(a)(iii) of the petition, 7 places are mentioned where langars were opened. The petitioner in course of his deposition speaks about four, two of which are in this list and two outside the same. Five of the places originally named in the petition are not mentioned by any of the witnesses for the Petitioner. The only evidence available is that of the Petitioner Dayal Singh himself P.W-8. In answer to question No. 8 he mentioned four places—Majithia House at Amritsar, Taran Taran, Khadur Sahib and Sarhali. In the answers given by this witness to questions 26 to 35, he attempted to give some indication as to the manner in which he came to know of the existence and the continuance of these *langars* during the election period. He had passed by the *langar* at Majithia House at Amritsar once or twice. He could not give even the approximate date. It was about mid-day that he was there. He saw 15 or 20 persons taking their meals but none of them he could recognise. Majithia House is according to the Respondent in occupation of his brother-in-Law Mangal Singh Man who stay there with 15 to 20 members—including his family establishment. Without any evidence as to who the 15 or 20 persons taking their meals seen by the Petitioner were, it is unsafe to hold that such persons were workers of the Respondent or that there was a *langar* at that place for 20 or 25 days at one stretch. They might have been the occupants of the place. The only other *langar* referred to in detail is at Tarn Taran. The Petitioner had passed that place on many occasions as he had to go to his village that way. Here also some people were found to be eating and some were coming out, but here also he did not know or recognise any of those persons. No evidence is available about Khadur Sahib and Sarhali. As against such evidence we have got the testimony of R.W-3 respondent himself who denies having run such *langars*. Surinder Singh (R.W-4) who was the General Secretary of the Congress Committee, Tarn Taran also gives a definite denial of the existence of *langars* at Tarn Taran. He had visited Sarhali on the day of the poll and there was no *langar* there on that day. Manohar Lal (R.W-5) is the General Secretary of the District Congress Committee (Rural), Amritsar District, who was in control of the election propaganda throughout the rural area of the Amritsar district, in terms of the instructions which had been received from

the State Congress Committee. He has denied the existence of any *langar* at Majithia House or at Tarn Taran. He also had not seen any other *langar* being run during the period. Of similar effect are the testimony of Nahar Singh R.W-9, in answer to questions 3, 4 and 5, Sohan Singh R.W-10 in answer to questions 2 and 3 and Bishan Singh, R.W-11 election agent in answers to question No. 13.

50. In this state of the evidence, there is no escape from the conclusion that the petitioner has failed to prove that *langars* were run at any one or more of the places mentioned by him by the Respondent during the election period. The question, therefore, of not including the expenses of such langars does not arise.

(c) Non-inclusion of payment to Man Singh, Bachittar Singh and Mangal Singh.

51. On behalf of the Petitioner no evidence could be adduced about the engagement of these three persons or of payment to them for work during the election period. The petitioner did not seriously press this part of the case and this also must be found against the Petitioner.

52. On the conclusions reached under the different heads discussed above, Issue No. 5 is decided against the Petitioner and in favour of the Respondent. The accounts submitted by the Respondent are not false or underestimated.

*Issue No. 6*

53. Under this issue it falls to be decided whether one Beant Singh had been a Sarpanch and if so, whether his appointment by the Respondent as a polling agent offends against the provisions of Section 123(7) of the Representation of the People Act. Before the merits under this issue are taken up, objections, in the nature of preliminary ones raised by the Respondents, need consideration. For a proper appreciation of the same the relevant contents of the pleadings have to be referred to, the contention being the pleadings would not permit the relevant question to be considered.

*Is there a deficiency in the Petition about Beant Singh?*

54. In paragraph 6 of the Election Petition the petitioner has alleged that the Respondent had been guilty of corrupt practices adopted by him and his supporters, the full particulars whereof are mentioned in Schedule C to the Petition [The reference to Schedule B in the petition originally filed was allowed to be corrected as a typographical slip for Schedule C] In subparagraph (1) to paragraph 6 it is further alleged that the Respondent had procured the assistance of several persons serving under the Government of India, the Punjab State and the Local Government offices for the furtherance of his election. In Schedule 'C' under item No. 3, the further detail given is that Beant Singh of Lapoki, a Sarpanch of village Ardhang within Tehsil Ajnala, had worked as a polling agent for the Respondent at polling booth Chogawan, which was against the election rules.

55. In the final written statement filed on behalf of the Respondent, the objections raised are to the following effect:—

> The relevant rules infringed have not been disclosed nor the illegality involved in the person acting as alleged have been stated. Allegations in sub-clause (1) of paragraph 6 of the Petition are denied. "Respondent did not procure the alleged assistance for the furtherance of the prospects of his election from any person serving under the Government of India, Punjab State or the local Government offices."

The answer to the particulars as given under item 3 of Schedule C of the Election Petition, the written statement was in the following terms:—

> "Even if the petitioner proves S. Beant Singh to be a Sarpanch, Sarpanch is not included in the list of Government servants mentioned in Section 123(7) of the Representation of the People Act, 1951. Consequently his appointment as polling agent will neither infringe any law or rule nor constitute any corrupt practice; and mere appointment as polling agent as alleged does not constitute any corrupt practice."

It is in this state of the pleadings that this issue has been raised. On behalf of the Respondent it is contended that though it is stated in the petition that Beant Singh had acted as a polling agent of the Respondent and that he was at the material time a Sarpanch there is no allegation that the polling agent had been appointed by the Respondent or his election agent. It is urged that in view of the

absence of such an allegation the respondent is not called upon to adduce any evidence or to cross examine the petitioner's witnesses with regard to the question whether Beant Singh had been appointed by the Respondent or his election agent. This objection as urged during the final argument is of the substance. The learned advocate for the Respondent was constrained to concede that during the hearing the respondent's attitude was altogether different. Evidence had been adduced on the part of the petitioner that Beant Singh had been appointed polling agent for the respondent and that by the election agent of the latter. The Respondent's election agent, when examined for the Respondent, had been put questions during the examination in chief with regard to the manner in which he had appointed the polling agent and that to build up the defence that the polling agents having been appointed on blank forms signed by the election agent the appointment could not be deemed to have been made by him. The Respondent had actually cross examined the petitioners' witnesses as to who had appointed Beant Singh or how the appointment had been made. It will further appear that though there is a specific denial of the fact that Beant Singh was a Sarpanch, there is no denial of the allegation clearly made that he had been appointed as a polling agent of the Respondent. There is only a general denial in paragraph 6 of the written statement on the merits, of the allegations as in paragraph 6(i) of the petition. It is well settled that such general denial by itself is not sufficient when in connection with the particulars given in Schedule C attached to the petition the Respondent gives a direct denial of some only of the facts alleged, but omits to deny one, and that a very vital one, of those facts, i.e. Beant Singh had been engaged as a polling agent of the Respondent. Such denial is absent presumably because the Respondent, responsible and straightforward as he appeared to be, would not be a party to a statement which was not and cannot be supported as a fact. The defence of the Respondent is, therefore, of a two fold character—(1) that Beant Singh was not a Sarpanch and (2) ever if he found to be a Sarpanch, such an office does not come within the mischief of sub-section (7) of Section 123 of the Act. The fact of his having acted as a polling agent is admitted by implication and also during evidence.

56. It is no doubt well settled that the petitioner in an election petition cannot be permitted to rely on a particular corrupt practice, if not pleaded in the petition [*Mast Ram* v. *Iqbal Singh* (1955)] 12 E.L.R. 34 or if full particulars of all corrupt practices are not furnished [*Bhikaji Keshao Joshi* vs. *Brij Lal Nand Lal Biyani* (1955)] 10 E.L.R. 357. Reliance was placed on the observations of the Judicial Committee of the Privy Council in *Siddik Mohammed Shah* v. *Mst. Saran* A.I.R. 1930 P.C. 57 to the effect that—

> "Where a claim has been never made in the defence presented no amount of evidence can be looked into upon a plea which was never put forward."

The facts and circumstances of the present case are, however, altogether different. As already pointed out that there are clear and unambiguous statements in the election petition and that Beant Singh was a Sarpanch and that he had acted in the election as a polling agent for the Respondent, there was no denial in the written statement of the allegation in item (3) of Schedule C to the Petition that he was a polling agent of the Respondent. During the examination of witnesses it was not suggested by the Respondent that Beant Singh had not acted as a polling agent of the Respondent. As to the manner in which he had been appointed as polling agent is clear from the statutory provisions or that is a matter of evidence which need not have been stated in the pleadings. The nature and particulars of the corrupt practice pleaded were quite specific and clear. The respective parties had no doubt about the nature and quantum of evidence required either to prove or to repell the application of the provision of Section 123(7) of the Act While framing this particular issue only those points which were contested were included. The question whether in fact Beant Singh had acted as a polling agent of the Respondent not having been contested was not included in the issue after the parties had been heard. Further, both the parties have adduced sufficient evidence on the question as to who had appointed Beant Singh as polling agent The respondent has introduced through his own witnesses or in course of cross examination of the petitioner's witnesses relevant and sufficient evidence on the point. Confronted with such clear evidence it is not now open to the respondent to turn round and say that the Tribunal is not entitled to go into the question whether the appointment of the polling agent was by the respondent or by his election agent. The avertments in the pleadings and the conduct of the parties have been such that there can be no question that the point was clearly raised and understood by the parties, has been sufficiently canvassed by both the parties and relevant evidence has been adduced and I am to give my decision on the same.

57. Reference is next made by the Respondent to the form of issue No. 6 particularly the last sentence of that issue It is argued that that part of the issue being to the effect that if Beant Singh is found to have been a Sarpanch when he

was acting as polling agent, did this materially affect the election, clearly indicates that the intention of the petitioner was in having such an issue framed to bring this allegation within the ambit of clause (d) of sub-section (1) of section 100 and not clause (b) of sub-section (1) of the same section. It is contended that if the non-observance of some of the statutory provisions or the committal of a corrupt practice by a person other than the candidate or his election agent or a person acting with the consent of such candidate or election agent be pleaded, the petitioner must before he can succeed prove to the satisfaction of the Tribunal that by such an act the result of the election, in so far as it concerns the returned candidate, had been materially affected. I do not think that there is any force in this argument either. After it is found that the returned candidate had obtained, for the furtherance of the prospect of his election, assistance from a person in the service of the government and belonging to any of the categories mentioned, that makes that offence to be a corrupt practice and it is not, in such a case, necessary to enter into the question whether the result of the election has been materially affected by such an act. The offence falling within clause (b) of sub-section 1 of section 100 makes the last sentence of the issue redundant. If, on the other hand, it be found in favour of the respondent that the person engaged was not neither a person in the service of government or falls under any of the categories mentioned in sub-section (7) of section 123, the petitioner's case as under this issue fails in its entirity and there is no occasion to consider whether by such an act, the result of the election had in any way been materially affected. The form of the issue or the last sentence thereof does not, therefore, alter the case of the parties as made in the pleadings and as indicated in the first part of issue No. 6. That such was the case was understood by the parties and evidence adduced. The rights of the parties or the jurisdiction of the Tribunal are not affected in any way. There is no question of either of the parties being taken by surprise or that any prejudice will be suffered by either of them.

58. My conclusion, therefore, is that there is no such deficiency in the pleadings which can be relied upon by the respondent or that the allegations made by the petitioner militate in any way against an enquiry as to what extent, if at all, sub-section (7) of section 123 is attracted in the present case taken along with clause (b) of sub-section 1 of section 100 of the Act.

59. *Was Beant Singh a Sarpanch?*—Beant Singh P.W. 1 states in course of his deposition that he was a Sarpanch of village Uridhan in Tehsil Ajnala. The very first question put to this witness during cross-examination shows unmistakably that the Respondent's case was that Beant Singh was a Sarpanch but that he had been elected by the Panchayat, who in their turn elected by the people. The Respondent also states in his examination in chief "I do not remember whether I knew at the time of election that he (Beant Singh) was a Sarpanch. I now know that he is a Sarpanch, but never knew at that time whether he was a Sarpanch at the time of election. I never asked him." Bishan Singh (R.W. 11) election agent of the Respondent also speaks in the same strain. It must accordingly be found that Beant Singh was a Sarpanch at the relevant time.

60. *Did Beant Singh act or had been appointed as the Polling Agent of the Respondent?*—I have already pointed out that the Respondent did not controvert the allegation that Beant Singh acted as his polling agent. I shall, however, indicate briefly the evidence on this point. Beant Singh P.W. 1 supports this and no question is put to him during cross-examination. Bishan Singh R.W. 11 also accepts the position that Beant Singh had acted as such for Respondent. I find that Beant Singh did act as the polling agent of the Respondent at Chogwan. Whether the said appointment was legal or effective as against the Respondent will be next considered.

61. *Effect of blank forms being signed.*—The explanation given by the election agent Bishan Singh is that he had distributed amongst the loacl election workers blank polling agent nomination forms signed by him before the names of the persons to act as polling agent had been filled in. It is argued on behalf of the Respondent that the subsequent filling in of the names—including that of Beant Singh cannot be treated or have the effect of such persons having been appointed by the Respondent or even the election agent.

62. Section 46 of the Representation of the People Act makes the provision for the appointment of polling agents in such manner as may be prescribed. The relevant rule is Rule 13. Under sub-rule 2 of this Rule every appointment of polling agent is to be in form 10 and such form is to be made over to the polling agent for production at the polling station. In the present case Beant Singh has been examined as P.W. 1. In answer to questions Nos. 2 and 3 he has stated that he had been appointed by Bishan Singh polling agent for Surjit Singh Majithia for polling station Chogawan. No question was put to him in cross

examination on behalf of the Respondent. All that Bishan Singh, who was the election agent appointed by the respondent stated in answer to question No. 28 was that he did not appoint Beant Singh as polling agent for the respondent at Chogawan *directly*. He had given blank polling agent forms signed by him to the local Congress workers. He had signed about one thousand such blank forms. In course of cross-examination in answer to question No. 57 he said that he did not keep any list of polling agents appointed by him. He further stated that, except in the case of one or two in the Khalra constituency, no other appointment had been made by him directly. Further he admitted that he had not objected to any appointment made of polling agents by the Congress workers in the blank forms which had been supplied by him with his signatures.

63. The position, therefore, is that Bishan Singh as the election agent of the respondent had signed blank forms purporting to act under Section 46 of the Act read with Rule 13. The question is are the polling agents appointed by the Congress workers on the basis of such signed blank forms to be taken to be nomination by the Election Agent. It was contended that section 46 is to be read alongwith the provisions of sub-section (7) of section 123 of the Act. The name of the polling agent having been filled in by the Congress workers such action was, if at all, an act by an agent on behalf of the respondent. Under explanation (1) to sub-section (7) of section 123 an agent "includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate". Some Congress workers who might have filled in the blank polling agent appointment form with the name of the polling agent Beant Singh will come within the category of "any person" who might have acted as an agent in connection with the election, for attracting the provisions contained in clause (b) or (f) of sub-section (7) of section 123. Such an "agent" must, under explanation (1), be shown to have acted "with the consent of the candidate".

64. As I have indicated already the appointment of the polling agent was in the circumstances of this case an act by Bishan Singh when he signed the polling agent appointment forms authorising some person or other to fill in the names. The action of such other persons is the action by the Election Agent himself. The nomination of Beant Singh was, therefore, an appointment by the election agent himself.

65. Even if the argument advanced on behalf of the respondent be accepted, the position of the respondent will not in any way improve. When the action by the Congress workers in filling in the names in the blank forms was under the authority given to them by the election agent it is to be presumed to be with the consent of the candidate also. It is admitted by the Respondent and his election agent that neither would have objected to this appointment, even if they had known that he was a Sarpanch.

This line of argument had been adopted by the counsel for the respondent with a view to build up the argument that if the appointment of Beant Singh be not either by the candidate himself or by his election agent but by some other person without the consent of the candidate, the appointment of Beant Singh as polling agent would not be a corrupt practice coming under clause (b) of sub-section (1) of section 100. Clause (b) requires that the corrupt practice has been committed either by a returned candidate or by his election agent or by any other person with the consent of the returned candidate or of his election agent. If the signing of the blank forms be interpreted to have the effect that the person filling in the name of the polling agent was the person who appointed Beant Singh that would not come under clause (b) of sub-section (1) of section 100, but it would come, if it would come at all, under sub-clause (iv) of clause (d) of sub-section 1 of section 100. In such a case under the opening words of clause (d) the onus lies on the petitioner to show that by the appointment of Beant Singh, a Sarpanch, "the result of the election, in so far as it concerns a returned candidate, has been materially affected". In such a big constituency with hundreds of polling booths and in the absence of any evidence that Beant Singh had done anything except working as a polling agent, it will be difficult to support the view that his appointment as polling agent had affected the result of the election materially. It was contended, therefore, that in the absence of any direct proof that the consent of the returned candidate or his election agent had been given, it was not a corrupt practice which would materially affect the result of the election.

As I have pointed out already that there is no escape from the conclusion that the admitted and uncontradicted fact remains that Beant Singh had acted as a polling agent and that such appointment had been made by the election agent himself.

66. The criticisms by the Respondent are of no avail as the Supreme Court has very recently in Dr. Parmar's case (Parmar *v.* Hira Singh Paul decided on October 17, 1958) clearly laid down that signing blank forms for the appointment of polling agents is not a defective appointment and the candidate himself in the present case frankly admitted that such acts had been done by his election agent under the very general authority given by him to his agent. This objection therefore fails.

67. *Mens rea.*—It has also been contended on behalf of the Respondent that even if it be found that Beant Singh was in the service of the Government and held one or other posts described in sub-section (7) of Section 123, it will not be sufficient merely to prove that he had acted as a polling agent on behalf of the Respondent. It will be for the Tribunal to find out whether there was a corrupt mind or in other words whether there was *mens rea*. The language used in sub-section (7) of section 123 is that if a candidate or his agent or by any other person obtains, procures or abets or attempts to obtain and procure the assistance for the furtherance of the prospect of the candidate's election of any person answering the description as given in the different clauses of that sub-section a corrupt practice is committed.

68. The Respondent placed reliance on the *Bradford Case* 1 O'M&H. 35. When a statute provides against a candidate "corruptly" doing something in order to be elected, it must be shown that a thing was done with an evil mind. There must be some evil motive in it and it must be done "in order to be elected".

69. Field J. had in a later case *Borough of Barrow In Furness* 4 O'M & H 76 (79) traced the historical development of the law relating to distribution of refreshment as an illegal or corrupt practice in an election. There was at common law as well as by statute a prohibition of everything corrupt "meaning thereby not an immoral thing, but the international infringement of the law for securing the free exercise of the franchise". See also Schofield on Local Government Elections (3rd Edition), page 280. Schofield's Parliamentary Elections (2nd Edition), pages 401 to 402. Offences associated with elections in England are of two types; common law offences and statutory offences. In the last century statutes had in effect covered the common law offences by giving them statutory definitions in corresponding sections. After such statutory enactments, the major portion of the common law provisions were superseded. The statutory offences now fall into three categories: corrupt practices, illegal practices and election offences. There is a fundamental difference between a corrupt and an illegal practice—

> "to establish the former, it is essential to show that a corrupt intention is present. A corrupt practice is a thing the mind goes along, whereas an illegal practice is a thing the legislature is determined to prevent whether it is done honestly or dishonestly. To make the doing of an act corrupt, it must be done with an evil mind with the knowledge that it is wrong and with evil feelings and evil intentions." Schofield relies on the two decisions referred to above for the proposition as enunciated above.

70. It is overlooked by the learned Counsel for the Respondent that there is a fundamental difference between the English rules and those by which Indian elections are governed. As observed by Field J. in *Barrow In Furness case* (*Supra*) on page 79 of the Report that before the English Act 1854, giving of refreshments on the spot where the polling was taking place was not bribery or illegal treating. The Act of 1854 put a stop to it because it tended to corruption. "Therefore, the Act of 1854 distinctly provided that it should be an illegal practice and the penalty should be S. 40" [17 and 18 Vict. C. 102 S 23 now repealed.] Under the Corrupt Practices Act of 1883, giving of refreshments to voters on the day of polling on account of his having polled was made illegal only. All the items which were considered to be corrupt practices under the English Act were also offences punishable as crimes.

Reference has already been made to the drastic changes which were introduced in the Indian Law by the 1956—amendments. Previously there had been under the Indian Law two types of corrupt practices as also illegal practices. At present there is only one type of corrupt practice and all references to illegal practices have been omitted. On the language used and the different circumstances ruling under the Indian law there cannot be any room for argument that the presence of *mens rea* is essential to prove the committing of a corrupt practice. The plea of the respondent that it was not known to the person concerned *viz.* the Respondent and his Election Agent that Beant Singh was a

Sarpanch and the absence of *mens rea* would even on the proof of such a person being appointed a polling agent is not available to the respondent. This contention, therefore, cannot be accepted. This view also has the approval of the Supreme Court in the judgement just delivered on October 17, 1958 in *Y. S. Parmar* v. *Hira Singh Paul*.

71. *Ardhang or Urdhan.*—Before I take up the principal question canvassed whether a Sarpanch comes within the mischief of section 123(7) of the Act another short point taken about the identity of Beant Singh may be disposed of. Under item No. 3 of Schedule 'C' attached to the petition, Beant Singh is alleged to be the Sarpanch of Ardhang. When Beant Singh was being examined as P.W. 1, his village home is stated to be at Urdhan, Tehsil Ajnala. At the time of argument it was faintly suggested that Beant Singh of Ardhang was not the same person as Beant Singh of Urdhan. There does not appear to be any substance in this. The pronunciations of the two words are so very similar. The English transcriptions of such sounds become deceptive—no importance can be attached to such differences. There is further no suggestion that in Tehsil Ajnala there are two places Urdhan and Ardhang. The examination and cross-examination of the different witnesses proceeded throughout the hearing on the footing that although spelt in different ways, the village referred to by the witness was the same as in the petition. No new case has been attempted to be made by the petitioner and both the parties have proceeded on the fotting that Beant Singh who deposed is Beant Singh referred to in the petition and Beant Singh who had acted as the polling agent of the respondent was the same person who had appeared as witness or had been mentioned in the election petition.

72. *Is a Sarpanch in the service of the Government?*—The conclusion, therefore, on this part of the case is that Beant Singh was a Sarpanch and had been engaged by the Election Agent of the Respondent as a polling agent in Polling Station Chowgaon. Although in the written statement it was alleged that appointment as a polling agent cannot be regarded as obtaining assistance of a person in the furtherance of the prospect of the candidate's election, the learned counsel, however, rightly did not raise any question based upon such defence. Explanation (1) to sub-section (7) of section 123 of the Act, makes it abundantly clear that the appointment of a person as a polling agent is obtaining the assistance of such a person for the furtherance of the prospect of the election.

73. The only question, therefore, that falls to be considered is whether a Sarpanch comes within any one of the different categories of persons considered to be in the service of Government as described in clauses (a) to (g) of sub-section (7) of section 123 of the Act. It has to be noticed at the very outset that the provisions of this sub-section had been materially altered under the 1956 amendment. The nature of the changes will have to be considered when reference is made to the decisions based upon the unamended section. I indicate now the implications of the different provisions of this sub-section. It is noticed that under some of the heads a limited number of government officers are included and according to both the parties some of the sub-clauses are not attracted at all in the present case. Whatever may be the doubt and dispute about the nature of the office held by a Sarpanch, he is not a gazetted officer or a stipendary judge or a stipendary magistrate or a member of the armed forces of the Union or of the police forces or an Excise officer. No notification has been issued under clause (g) of sub-section (7) and it is, therefore, necessary to ascertain whether a Sarpanch comes under either sub-clause (b) or (f). On behalf of the petitioner it is argued that a Sarpanch comes under clause (f), i.e. he is a revenue officer. He is also functioning as a Magistrate, that is he comes under both clauses (f) and (b). He is not in receipt of any pay and therefore, it is argued on behalf of the petitioner that clause (b) is to be interpreted as referring to Judges who are in receipt of remuneration, but in the case of Magistrates the qualifying word 'stipendary' does not apply.

74 Before I deal further with implications and connotations of clauses (b) and (f) of sub-section (7) of section 123, a detailed reference will have to be made to the provisions of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953). Beant Singh was appointed as a Sarpanch under this Act. We have to ascertain, the nature of the office of a Sarpanch, how he is appointed, what are his duties and functions. I have been taken with meticulous care by the lawyers on both sides through the provisions of this Act and I shall refer to the more important provisions as pointed out by the parties, and in addition to some more.

75. Under the Punjab Gram Panchayat Act, panchayats were brought into existence for the purpose of vesting such panchayats and/or some of the office-bearers thereof with functions which in the past used to be discharged by other authorities. Section3(1) defines a panch as a member of a Gram Panchayat (constituted under section 5 of the Act) or a panchayat union or an Adalti panchayat and "includes a Sarpanch". Under clause (1) of Section 3 a panch and a sarpanch are public servants under section 91 of the Indian Penal Code. Establishment and constitution of gram panchayat are detailed in section 5. Sub-section (5) of section 5 details the disqualifications for being a member of a panchayat and includes among others all the qualifications required for appointment in public service [see clause (c)]. Section 6 lays down the powers and jurisdiction of gram and adalti panchayats.

76. Every Gram Panchayat is under section 8 by name a body corporate. After a gram panchayat is formed a sarpanch is elected by the panches under section 9 from amongst themselves A sarpanch may under section 11 be removed if atleast two thirds of the panches vote for such removal Provisions are made for the filling up of casual vacancies and in case of default or if sufficient number of panches are not elected the government may proceed to fill in the vacancies; such persons to hold office for the unexpired portion of the term of the person in whose place the appointment is made Section 19 of the Act details the various duties of a gram panchayat. The majority of such duties are to make arrangements for carrying out the requirements of the area over which the gram panchayat functions in respect of various matters including sanitation, supply of water, burial and cremation grounds, public health, husbandry, sports and gardens libraries registrations of seals of livestock, development of agriculture ,maintenance of a gram fund, construction, repair and maintenance of public places and of public utility concerns, maintenance of culverts and bridges, veterinary, medical relief, famine relief and "any other matter which government may declare to be fit and proper to be taken under the control and administration of the Gram Panchayat". There is an important proviso to all the different items to the effect that such matters which are under direct administrative control of any government or local authority such functions will not vest in the panchayats unless such duty or power has been transferred or delegated to the panchayat by an order of government or of the local authority.

77. Sub-section (3) of section 19 further provides that it is the duty of the gram panchayat to perform

> "(a) The duties of the Panchayat under the Punjab Village and Small Town Patrol Act, 1918; and
>
> "(b) such duties of village headmen in connection with village watchmen as government may prescribe by rules under Section 39-A of the Punjab Laws Act, 1872".

78 A Panchayat has got under section 21 the power to require removal of encroachments and nuisance of various types and also under section 22 to issue general orders above various matters.

The sanction behind the authority of the panchayat is contained in the penalty provision in section 23 for disobedience of a special or general order of the panchayat.

79. Special emphasis was laid on behalf of the petitioner to the provisions contained in section 24 of the Act in which on a complaint made or a report submitted by any person to the gram panchayat that certain public servants like a peon, bailiff, constable, chaukidar, forest guard, game watcher, patwari or chaukidar had not been functioning properly, the gram panchayat may enquire into the matter and submit a report to the superior officer or to the Deputy Commissioner or the Sub-Divisional Officer as the case may be This as also sub-section (2) of Section 24 include supervision by the Panchayat over a Patwari.

80. In clause (f) of sub-section (7) of section 123 patwari is a revenue officer coming within the mischief of that section. It is contended that a sarpanch or a panch having the authority to enquire into the working of a patwari might require such a patwari to perform the duties imposed upon him by any law or rules shows *prima facie* that a sarpanch is the holder of a post which is to be considered to be that of a supervising revenue officer. It is further contended that the expression used in clause (f) of sub-section (7) of section 123 are "revenue officers including village accountants such as Patwaris,————and the like" unmistakably ropes in the post of a sarpanch as the nature of his duties

and functions are like officers holding positions superior to a patwari. I shall further consider this aspect of the question after we have gone through the remaining portion of the relevant provisions of the Punjab Gram Panchayat Act.

Section 25 of the Punjab Gram Panchayat Act further provides—

> "A gram panchayat may notwithstanding any law to the contrary, in respect of any area within its jurisdiction, enter into contract with government or a local body to collect land revenue or any taxes or duties payable to government or a local body on being allowed such collection charges as may be prescribed".

It is urged on behalf of the petitioner that a gram panchayat including the sarpanch becomes in such case a body of revenue officers for the collection of revenue or other local duties and taxes.

81. Under Section 26 of the some Act again, the panchayat is given the authority to introduce prohibition within the local area of the panchayat. The panchayat is given the powers and functions of the Collector under the Punjab Excise Act, 1914. A resolution passed by the panchayat will be binding upon the Excise and Taxation Commissioner, unless it comes within the special circumstances described in the proviso to this section. Does this bring the Panchayat including the Sarpanch within the mischief of sub-clause (c) [excise officers] of clause 7 of sub-section 1 of section 123 of the Representation of the People Act?

Section 28 of the Act vests authority in the Sarpanch and if authorised in writing by the gram Panchayat in any other panch to enter into and upon any building or land in order to make an inspection survey or to execute work which the gram panchayat is authorised by this Act or by rules or bye-laws made thereunder to make or execute.

Section 32 of the Act vests in the panchayat control of all public streets, water ways other than canals with certain powers as detailed therein.

82. Chapter IV of the Act beginning from section 38 details the criminal judicial functions of a gram panchayat. Trial of offences described in Schedule I-A is vested in the panch. Section 40(2) declares a panchayat to be deemed to be criminal court when trying a criminal case. The different kinds of punishments which a panchayat may on conviction sentence are described in section 48.

Under Chapter V beginning from section 52 are detailed the civil and revenue judicial functions of the panch. The nature of the suits to be tried and the limits of the jurisdiction are described. The District Judges or the Collectors as the case may be are given powers of supervision and of revision. Provisions of the Indian Oaths Act 1873 are made applicable as also the right to summon witnesses or to direct production of papers and documents. Powers for issuing summons finality of decisions by the panchayat, are attracted; principles of res-judicata and provisions for proceeding against persons for contempt of court are also provided.

Section 81 of the Act describes the different sources of income which are to be credited to the gram fund. Clause (d) of that section provides for—

> "10 per cent of the land revenue paid by the gram panchayat area to the government".

Subject to certain rules and orders a panchayat has also the authority to impose taxes.

83. In chapter IX supervisory control over the panchayats is vested in the Deputy Commissioner, Sub-Divisional Officer, or Director. A Director means the Director of Panchayats appointed under this Act. Authority to delegate the powers is also given.

Section 102 vests the Director with the power to suspend a panch and the Government to remove any panch on the happening of the contingency mentioned under that section. Section 110 requires every policy officer to give immediate information to the panchayat of any offence coming to his knowledge which is triable by a panchayat and to assist all members and servants of the panchayat in the exercise of their lawful authority. Special periods of limitation for certain claims and the table of fees realisable by the panchayat for different types of proceedings are described in Schedules II and III of the Act.

84. These are the relevant provisions in the Act from which it will have to be decided whether a Sarpanch comes within the mischief of the provisions in Section 123(7) of the Representation of the People Act.

DECISIONS

85 My attention has been drawn by the parties to various decisions. Panch and Sarpanch are designations used in different States under different Statutes and as I shall indicate later the final decision will depend on the relevant provisions under which in the case now before me Beant Singh had been acting as a Sarpanch. It will, however, be necessary to refer to the decisions to ascertain the trend of opinion in the different States.

86. There are conflicting decisions about Panches and Sarpanches being either village officers or government servants. All the four decisions are on interpretation of the U.P. Panchayat Raj Act of 1947. Two of them are by the Gorakhpur Tribunal; *Madan Pal* v. *Rajdeo Upadhya*, 6 E.L.R. 28 (1953) and *Shibbal Lal Saksena* v. *Harishanker Prasad*, 9 E.L.R. 403 (1954). Adalti Panches, Adalti Sarpanches, Sarpanches, Sabhapatis, Up-sabhapaties and Mukhias are persons serving under the government of a State under the then provisions of section 123(8) and obtaining their assistance for the furtherance of the prospect of a candidate's election constituted a corrupt practice. The latter case went up on appeal to the Supreme Court and is reported as *Harishanker Prasad* v. *Shibban Lal Saksena* 10 E.L.R. 126. The Supreme Court came to the conclusion that by whatever name he is called, a Mukhia is a village head-man and in any event a village officer. Employment of Mukhia to canvass was under the old provisions of section 123(8) of the Act a major corrupt practice sufficient to render an election void.

87. A contrary view had been expressed in *Deo Chand* v *Vashist Narain*, 6 E.L.R. 138 (1953) and *Ganga Prasad Pathak* v. *Saligram Jaiswal*, 11 E.L.R. 415 (1956). Mukhia, Sabhapatis and Panches of U.P. were held not to be employed by the State and not, therefore, government servants within the meaning of the then section 123(8). In the latter case also Sarpanches and Panches, Pradhan, Up-pradhan and members of the Land Managing Committees under the same U.P. Panchayat Raj Act, 1947, were found not to be serving under the government of U.P. to attract sub-section (8) of section 123 of the Representation of the People Act. Mukhias, however, were held to be persons serving under the government of the State under that sub-section.

88. It will be necessary in this connection to consider the provisions contained in sub-section (8) of section 123 before the 1956 amendment and to compare the same with the existing provisions.

Provisions of the old sub-section (8) of section 123 before the 1956 amendment were in the following terms—

> "123(8). The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person."

*Explanation.*—For the purposes of this clause—

> (a) a person serving under the Government of India shall not include any person who has been declared by the Central Government to be a person to whom the provisions of this clause shall not apply;
>
> (b) a person serving under the Government of any State shall include a patwari, chaukidar, dafedar, zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole-time office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person whom the provisions of this clause shall not apply."

It will be noticed that in the first paragraph of this sub-section there was a general ban against obtaining assistance "from any person serving under the Government of India or Government of any State other than the giving of vote by such person". The Explanation was added, clause (a) of which gave option to the Government of India to exclude certain persons from the operation of the operative portion of the section. Clause (b) of the Explanation made it clear that certain named group of officers whether holding a whole-time office or not shall be deemed to be a person serving under the Government. Within this category

were mentioned among others the village headman "or any other village officer by whatever name he is called." In the decisions referred to above, the Tribunal and the Supreme Court were called upon to consider whether a Sarpanch or a Panch came within the expression village headman or any other village officer. The Supreme Court held that Mukhia under the U.P. Act was a village headman or at least a village officer.

89. That which was sub-section (8) of Section 123 before the passing of the amending Act 27 of 1956, has now become sub-section (7) of Section 123. The entire provisions contained in Chapters I and II of Part VII of the original Act was substituted by the 1956-amending Act by one Chapter only which contains only one section 123 A major alteration effected was to the effect that under the old provisions Chapter I dealt with corrupt practices and Chapter II with illegal practices. In Chapter I again there were two sub-divisions and corrupt practices were grouped under two heads as major and minor corrupt practices. All these have now been substituted by one type of corrupt practice without any sub-division of major or minor corrupt practices and the total deletion of illegal practices.

90. The other major and significant alteration effected was in excluding a large section of government servants from the operation of this penal provision The general bar against all persons in the service of government has now been substituted by limiting the ban to certain definite categories of persons in the service of government The very wide provisions, therefore, have now been substituted by the restricted provisions in sub-section (7) of section 123. In the case now before me it is not necessary to consider all the different clauses in this sub-section as admittedly a Sarpanch does not fall within clauses (a), (c), (d), (e) of sub-section (7). The petitioner claims that a Sarpanch falls under clauses (b) and (f) of sub-section (7). The relevant provisions of the sub-section, therefore, for the purpose of the present decision may be quoted as follows:—

"123(7). The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following clauses, namely:—

* * * * * *

(b) stipendiary judges and magistrates;

* * * * * *

* * * * * *

(f) revenue officers including village accountants, such as, patwaris, lekhpals, talatis, karnams and the like but excluding other village officers; and

* * * * * *

*Explanation.*—(1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purpose of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or a counting agent of that candidate."

91. It would be noticed that in the first paragraph of the present sub-section (7) the qualifying words "with the connivance of the candidate or his agent" appearing after "by any other person" have been dropped, thus removing the restriction which was there under the old provisions. Obtaining or attempting to obtain etc the assistance of the prohibited persons whether by the candidate, his agent or by any other person is placed under the same category. Any other person without the candidate's or his agent's conniving at it may now do something which will entail the candidate a forfeiture of his seat.

92. In the first paragraph again the expression "persons serving under the Government of India or the Government of any State" has been changed to "any person in the service of Government". It has been contended before me on

behalf of the respondent that the alteration made has restricted the group of persons who are barred out. Serving under the government included within its ambit persons who were in the employ of government, as also who were not employed but were working in the government. It was stated that honorary magistrates serve under the government, but they are not in the service of government as they do not draw any pay and are not governed by the Government Servants' Conduct Rules generally. It was also stated that the leave rules applicable to Government servants were not attracted. I should, however, state that the relevant rules in either case were not placed before me, but only a bald statement was made. Such rules have not been also made available to me. Secondly, it is contended that person serving the government even in an Advisory Committee would come under the old law but not under the new provisions. Thirdly, all persons serving under the Government were previously included whereas now only those specifically mentioned in clauses (a) to (g) of sub-section (7) of section 123 as may be in the service of government.

93. I do not think that such a sharp difference in implication of the two expressions "persons serving under the government" and "persons in the service of government" would be justified.

Clause (b) of sub-section (7) of section 123 excludes all "stipendiary judges and magistrates" who may be in the service of government from being asked to assist any candidate for the furtherance of the prospects of his election. There is no doubt that only such judicial officers who are in receipt of emoluments are included within the expression 'stipendiary judges'. According to the respondent the qualifying word 'stipendiary' qualifies both judges and magistrates. The petitioner on the other hand contends that while only judges who are in receipt of emoluments are brought within the clause, in the case of magistrates irrespective of the fact whether remuneration is received or not they come within the ban. This question is not altogether free from doubt and difficulty. Ordinarily the adjective qualifies both the words 'judges' and 'magistrates'. Is there any special provision in this statute justifying the limitation being applied only to the first category and not to the second? It was argued on behalf of the petitioner that honorary magistrates will come within the ban whereas honorary judges will not. It is, however, overlooked that under clause (a) of this sub-section all 'gazetted officers' are brought within the ambit of the restriction and honorary magistrates are as a rule gazetted officers and also technically Justices of the Peace.

94. In my view only stipendiary Judges and Magistrates are excluded. Clause (b) will not be attracted in the present case as Sarpanches as such are not in receipt of any personal emoluments.

95. Clause (f) of sub-section (7) of Section 123 creates greater difficulty. All revenue officers whether paid or honorary appear to be included by the two opening words. Other words which follow them clearly indicate that officers mentioned thereafter do not constitute an exhaustive list of all revenue officers, because such other persons are brought in by the use of the word 'including'. It is unquestionable that when an explanatory clause or phrase is added followed by the word 'including' the words subsequently used cover merely some of the ground and do not exhaust the whole field of revenue officers. Revenue officers are, therefore, not qualified or restricted by village accountants, but they are merely explanatory. Village accountants are mentioned only to rule out any doubt as to whether holders of such posts are revenue officers or not.

96. After Village accountants are described posts like patwari, lekhpal, talati and karnam. The designations so given are the special names used in different parts of the country in the revenue administration. But the legislature has made it abundantly clear that Revenue officers or village accountants are not limited to the four particular types of officers named, but such officers as are similar to those in all the different States in India. The addition of the words "and the like" makes that perfectly clear. So all these persons fall within the bar, being classed as Revenue Officers and Village Accountants.

97. The concluding clause is "but excluding other village officers". Doubts and disputes arise about the implication of this proviso. Is this a limitation to Village Accountants or to revenue officers? The expression "revenue officers" is a very wide term and does not include only persons working in or having jurisdiction within villages. Revenue Officers are connected with the revenue work in the State as a whole or in a Division, District, sub-division or other areas. A village is a unit over which there may be revenue officers and it is

argued that the expression revenue officers include within the category all supervisory revenue officers, but exclude all village revenue officers except village accountants. The intention of the legislature is that all revenue officers in the country whatever may be their jurisdiction or scope of work are included; provided that of village officers only those who are village accountants or those who are of the same type as the four named categories come within the ban. Village accountants are not defined and persons who are of the categories of Patwaris, Lekhpals, Talatis, Karnams and the like are to be determined in each particular case with reference to the rules about their appointment, or dismissal, and duties or functions. The term 'revenue' also is not limited to 'land revenue' only—but may refer to all kinds of realisations by the Centre or State—*viz.* custom, Sales Tax etc. I need not, however, for the present case, discuss this aspect of the question and the wider implications of the expression.

98. The term 'revenue officer' is also not restricted only to such persons as may be described as such in any particular local Statute. The functions and duties of each class of person objected to in any particular case will be required to be examined.

99. The expression "excluding other village officers" exclude from the operation of this provision all village officers, except village accountants "such as patwaris, lekhpals, talatis, karnams and the like". The reason for the specific exclusion of "other village officers" is due to the circumstance that the general classification of "village accountants" will include "accountants", who may not be concerned with 'Revenue' only but may be accountants in other departments of the administration. Accountants for the collection of local charges, not recognised as 'revenue'—as District Board, Local Board or Panchayati levies will not fall within the ban.

100. Further, the word 'accountant' indicates that his vocation or function is to keep or adjust accounts—he is also required to render accounts of collections made or expenses incurred. This also includes those who are employed to examine the accounts maintained by the primary officers. If the jurisdiction of such 'accountants' is not limited to a 'village' but is a wider one he will not be 'a village accountant' but may come under the wider general term of 'revenue officers' as in this sub-clause. The provision "excluding other village officers" will not restrict the scope of the term "revenue officers" such persons having jurisdiction over areas wider than "villages".

101. It has also to be noticed that the legislature found it impossible to indicate by name all the categories of "village accountants" known by different names in different parts of India. Certain illustrative types called from different States are mentioned. To avoid the interpretation that only the specified village accountants are included that the expression "and the like" has been added. But the language used has introduced certain other doubts and difficulties. Legislation has been undertaken in recent years in the different States of India and changes have been introduced in the method of appointment and dismissal of the officers known previously as 'patwaris' etc. Their powers and functions also are and have been altered—various new duties and responsibilities are being imposed on such persons, still known by their old designations—such powers being as varied as judicial, magisterial, civic, police etc. When designations not specifically named in the sub-section are required to be considered for determining whether they are of the type of 'patwaris, lekhpals' etc. the Court is faced with a difficulty in comparing the respective rules about appointment, dismissal, powers, duties and functions. Those will not be similar in many respects. How are they to be compared? The rule of *ejusdum genuis* will be attracted—but even then the rules of the named classes are so very variable and different that difficulties are felt for striking at a common characteristic for all.

102. The way out of this difficulty will be to consider "patwaris, lekhpals, talatis and karnams", irrespective of the changed or changing rules, to come within the purview of the penal clause of clause (f) of sub-section (7) of Section 123 of the Act.

103. If any other class of village accountants be attempted to be brought in on the strength of the expression "and the like" the test to be applied will be to find out whether such persons are (1) accountants (2) having jurisdiction over a village and (3) are required to deal with the collection or disbursal of "revenue". If they satisfy all the three conditions, only then can they come under the category of 'village accountants'. If those persons, with new designations are not required to deal with 'revenue' but have to discharge other functions, not relating to accounting of revenue, but may be similar to some or other functions (of a

non-revenue and accounting character) that will not be sufficient to attract clause (f) of sub-section (7) of Section 123 of the Representation of the People Act.

104. Even though such a person cannot fall within the categories as in clause (f) that will not rule out the possibility of his being affected by any other clause—he may be a gazetted officer, or a stipendiary judge or magistrate or an excise officer or the like.

105. It has further to be remembered what the Supreme Court has laid down—

(1) That receipt of any allowance or salary is not essential for proving that a person is in the service of government:

Provided that in the case of "stipendiary judges and magistrates" as in clause (b) receipt of remuneration is essential.

(2) It is immaterial whether the person is in wholetime or part-time employment.

106. Applying these tests in the case now before me is a Sarpanch a 'village accountant' or even a 'revenue officer' under clause (f) of sub-section (7) of Section 123 of the Representation of the People Act in addition to his being "in the service of government"?

From the analysis of the duties and functions as in the Punjab Gram Panchayat Act it is clear that a Sarpanch, as a member of the Gram Panchayat, functions as a Court for certain causes—with the powers of a judge and of a magistrate. He has also to discharge various functions of a civic nature. None of those bring him within clause (f). The only function which may have some connection with revenue are—the powers of enquiry, under section 24(1), and supervision over, under section 24(2) of the Punjab Gram Panchayat Act, the patwari. These functions are not such as would bring him within the category of a 'village accountant'. Will these functions make a Sarpanch 'a revenue officer'? In my view they will not. The characteristics of the position of an 'officer' is that he has got an executive function. Authority to receive a complaint or to submit a report about the work of a patwari carries with it no executive function sufficient in scope and character to make such a person 'an officer'. Sub-section (2) of Section 24 of the Punjab Gram Panchayat Act, gives an authority to the Gram Panchayat on receipt of a complaint to require the Patwari "to perform the duty" he is reported to have failed to perform. In this case there is an element of directive in the function of the Gram Panchayat. If the patwari does not carry out the direction the Gram Panchayat may report to the Superior Officer concerned or to the Deputy Commissioner or to the Sub-Divisional Officer. This may raise some doubt and difficulty but I need express no final opinion as even then the petitioner has to show that the Sarpanch is a person "in the service of government."

On a scrutiny of the relevant provisions of the Punjab Gram Panchayat Act already made in the earlier part of this judgment it will appear that members of the panchayat are public servants under Section 21 of the Indian Penal Code and the panchayat is under section 8 a body corporate. These do not, however, make the members of the panchayat persons in the service of government. The expression 'person in the service of government' connotes that he must be holding an appointment under the government. Mere vesting of some responsibility of jurisdiction in another body corporate or any member of such a corporate body do not *ipso-facto* convert them into persons in the service of government. A Sarpanch is neither appointed nor can be dismissed by the government. Mere powers of superintendence over a statutory body corporate like a municipality or the like or of certain officers or office holders of that corporation do not make either the body corporate or its officers persons "in the service of government". This also I have explained already while explaining the connotations of the different terms appearing in sub-section (7) of Section 123.

107. The conclusion reached, therefore, is that the Respondent Surjit Singh Majithia is proved to have obtained for the furtherance of his prospects of his election, the assistance of Beant Singh a Sarpanch who had been appointed as his polling agent at Chogawan by his Election Agent Bishan Singh. But a Sarpanch under the Punjab Gram Panchayat Act, 1952, is not included in either of clauses (b) or (f) of sub-section (7) of Section 123 of the Representation of the People Act. Such utilization of the services of Beant Singh was not, therefore, a corrupt practice under Section 123 of the Act. In that view the election of the Respondent cannot be questioned on this ground. Issue No. 6 is answered accordingly.

*Issue No. 7—*

108 Under item No. 10 of Schedule C attached to the petition, the Petitioner had alleged that the Respondent had threatened certain voters not to vote for the petitioner, but to vote for him. As will appear from the particulars furnished under item No. 10 the respondent is alleged to have threatened the petitioner's voters in the polling camp of Fatehabad and Khawaspur. 8 persons are mentioned as having been threatened. Of the 8 persons named, the Petitioner has examined Kartar Singh P.W-2, Janmeja Singh P.W-7 and Bijay Singh P.W-3. Kartar Singh, P.W-2, alleges that in the presence of Lambardar Balwant Singh and Chet Singh and a large number of people, respondent himself threatened them to do harm if the respondent was not supported. It was in camp Fatehabad and it is alleged that a lot of quarrel was going on. In course of cross-examination repeated references were made to the different proceedings which were pending against him alongwith Dayal Singh, Petitioner and his two sons or against him and Ravisher Singh, the son of the petitioner or to his appearing as a witness in certain proceedings which were filed by the Gram Panchayat against Jagan Nath. The evidence produced, oral and documentary, leave no room for doubt that he is associated with the Petitioner and his son and had been connected with various proceedings in court. Kartar Singh alone speaks about the incident at Fatehabad.

109. Bijay Singh, P.W-3 speaks about the incident at Khawaspur. The persons in whose presence the threat was given by the Respondent were Teja Singh, Duni Chand, Dalip Singh, Bachittar Singh, all of the same village. This threat is alleged to have been given in the camp of S. Partap Singh Kairon who was the candidate for the Assembly seat from the same constituency and was at a distance of about 200 yards from the polling station. He is related to Bachhitar Singh and was the polling agent of S. Partap Singh Kairon at Khawaspur. It came out in evidence that as the Respondent was a congress candidate for the parliamentary seat from this constituency and for the assembly seat the congress candidate was S. Partap Singh Kairon. According to the Respondent's witnesses who are the Secretaries of the local Congress Committees, arrangements at the different centres were made by the congress for both the assembly and the parliamentary seats. P.W-3, however, stated that the camp of S. Partap Singh was also the camp for the Petitioner Dayal Singh. Identity slips for S. Partap Singh and the petitioner Dayal Singh were alleged being issued by the same set of workers for both the candidates and from the same camp. It was commented on behalf of the petitioner that the denial of this fact is deposed by Bijay Singh should have come from somebody connected with S. Partap Singh, but the respondent has not produced any such evidence. Although it is not absolutely impossible that two congress nominees one for the Parliamentary and the other for the Assembly seat may not be working in co-operation and helping each other, but such allegation on behalf of the Petitioner should be supported by much better evidence than the uncorroborated testimony of P.W-3. This witness originally denied having any financial relationship between the petitioner and himself, but ultimately had to admit that the mortgagee rights in lands belonging to Dayal Singh had been purchased by him from Manmohan Singh near about one year ago. Such land is being possessed by this witness through the tenants on the land. Janmeja Singh who has been referred to already is alleged by the Respondent to have been a witness to the document by which the mortgagee's rights of Manmohan Singh were purchased by this witness. Although such a relationship by itself does not in any way make the witness one who should not be believed, but the manner in which he deposed and a clear denial in the beginning was subsequently transformed into an admission of the allegation, shows that the witness was not absolutely straightforward or wholly dependable. On such a witness reliance cannot be placed for coming to the conclusion about a charge as the present one.

110. The next witness is Janmeja Singh, P.W-7 who has already been referred to in connection with the hiring of jeeps, and is alleged to have been a worker under the Respondent. For reasons already discussed he is not a witness on whom reliance can be placed. The village is sharply divided into two groups. Of one of those the petitioner and his sons are the leaders or atleast the prime factors. The witnesses who have come to depose on his behalf all belong to that group. Some of the witnesses deposing on behalf of the Respondent belong to the other group. The petitioner himself (P.W-8) has got no personal knowledge about the alleged threatening of voters by the Respondent and he has tried to explain the genesis of the village fueds and materials have been brought on the record to show how serious criminal cases were started against partisan of one party or the other. On the proof of the existence of such strong party feelings and of the party affiliation of the three witnesses and in the case of two intimate connections with one group make it very difficult to relying upon them implicitely. If their statements had been supported by some or other independent witness or witnesses, the position might have been different. The witnesses who have deposed definitely

state that such acts on the part of the respondent at the two centres of Fatehabad and Khawaspur were in the presence of a large number of people Could not the petitioner find out persons who were not so intimately connected with one or the other group?

There is another aspect of the question which cannot be overlooked P W 2 Kartar Singh as it appears from his examination is a partisan Is it natural for the Respondent himself to approach him for supporting him? It is also in evidence that the respondent never visited Fatehabad before the date of polling and as he says he did not expect much support from this place The onus in this case is on the petitioner and on the evidence adduced by the petitioner I am not satisfied that the allegations have been proved It is not therefore, necessary to refer in detail to the depositions of the respondent's witnesses Had the petitioner's evidence been of a better type, I might have considered in detail the depositions of respondent's witnesses Some of the relevant witnesses examined on behalf of the respondent are R W 1 Harnam Singh, R W-3 respondent himself, R W-6 Amar Singh who was the polling agent of respondent in Khawaspur, R W-8 Parkash Singh who accompanied the respondent to Khawaspur, R W-9 Nahar Singh who also accompanied respondent to Khawaspur, and the election agent of respondent, namely, Bishan Singh, R W-11 The respondent has denied the allegations made under this head

111 It was faintly suggested on behalf of the Petitioner that there had been subsequent harassment of the petitioner's supporters at the instance of the Respondent as was attempted to be brought out during the examination of Harnam Singh, who was the Deputy Superintendent of Police at Tarn Taran during the relevant period I do not think that the deposition of Harnam Singh, R W-1 any way proves such subsequent harassment There were serious occurrences of a criminal nature which ultimately led to the death of a person This was the subject matter of a Sessions trial and I need not dilate upon the observation of the courts on this matter It has been stated that this is the subject matter of an appeal now pending before the High Court Suffice it to say that the interpretation put upon the deposition of Harnam Singh R W 1 is not justified

112 On the evidence as discussed above I come to the conclusion that the petitioner has failed to prove that the respondent had threatened the voters as alleged in item 10 of Schedule 'C' of the election petition Issue No 7 is decided against the Petitioner and in favour of the Respondent

*Issue No 8*—

113 This was an issue which was raised on the basis of certain allegations made in the election petition that because of a compromise effected between the Congress High Command and Master Tara Singh on behalf of the Akalis, the result of the election had been materially affected Master Tara Singh who had been cited as a witness and duly served did not appear on the date fixed When the petitioner was asked as to whether he would take any coercive steps to require the attendance of the said witness, he declined to do so and it was stated the allegation will not be pressed There are no materials on the record in support of the allegation made It is not, therefore, also necessary for me to consider whether such allegation even if proved had been relevant for consideration in the present proceedings During the argument the Counsel for the petitioner did not press this issue This issue must be decided against the petitioner and in favour of the respondent

ORDER

114 I have now dealt with all the issues in the case and the ultimate result is that the petitioner has failed to prove that the election of respondent Surjit Singh Majithia is affected by any one or more of the grounds indicated in Section 100 of the Representation of the People Act The result, therefore is that the petitioner is not entitled to any relief and Issue No 9 does not arise This Election Petition is dismissed with costs The Petitioner must pay to the Respondent consolidated costs of Rs 750 including the costs reserved under previous orders

*November* 6 1958

(Sd.) RAMA PRASAD MOOKERJEE,

Election Tribunal, Chandigarh

ANNEXURE I

ELECTION PETITION NO. 225 OF 1957.

Shri Dayal Singh—*Petitioner.*

*Versus*

Shri Surjit Singh Majithia and others—*Respondents.*

Shri M. R. Sawhney—*Counsel for Petitioner.*

Shri Bal Raj Tuli,
Shri Shubh Nath Kapahi,
Shri Veda Vayasa. } —*Counsels for Respondent.*

ORDER ON APPLICATION BY PETITIONER FOR FURNISHING FURTHER PARTICULARS.

*6th September,* 1957.

Shri Sawhney states that he will press for the consideration of the new schedules, attached to the present application, to be taken into consideration. It is not necessary according to him to refer to the new petition as he will not rely on any statement which appears in the new petition for the first time apart from the particulars which are added in some of the new schedules. Our attention, therefore, is confined to the original petition taken with two sets of schedules one filed originally with the Election Petition and the other set filed on 10th August, 1957.

So far as Schedule A is concerned, the petitioner does not ask for leave to add any further or new particulars.

As regards Schedule B only such items as introduce new particulars need be considered. They are stated in the order in which they are given in the petition. The other items not referred to below remain unaffected.

*Schedule 'B' (ii).*—Item (ii) of the original schedule made reference to a number of langars. Langars at Ajnala was one of those. In the new schedule, Ajnala langar is omitted and langars at three other places are introduced. There can be no question that the addition of such new langars will introduce instances of new corrupt practices. Reference, therefore, to the three new langars at Khadur Sahib, Gandiwind and Sarhali should not be allowed to be added.

The original allegation was that the langars were run to feed the workers of the candidate. In the new schedule it is added that other electors also were fed in the langars. Reference to the electors as being fed in the langars introduced a new case which cannot be allowed at this stage.

In the original schedule reference was made to the running of the langar during the election compaign, but in the revised schedule, it is made more definite and it is stated that these were run about a fortnight from before the election. There is no objection to the period being made more definite by giving the particulars. At the end of this sub-item (ii) names of a large number of persons are given who had, it is alleged, been taking meals at such langars. All the names mentioned except two, namely (a) Dafedar Kartar Singh; and (b) Puran Singh s/o Sham Singh of Tarn Taran are to be omitted as all the rest are alleged to have taken their meals at langars which are mentioned for the first time in the new schedule which have already been directed to be omitted.

Item (ii), therefore, of Schedule 'B' as given on the present occasion may be accepted subject to the deletion of the three new langars as also the reference to the electors and the names of all the persons from (c) to (v).

*Schedule 'B' (vi).*—Item (vi) in the original schedule merely indicated that respondent No. 1 had given bribes to the Schedule Caste electors, the names and particulars of such persons to be given later. Item (vi) in the new schedule has included the names of the electors who had been bribed, the agent through whom the bribe had been given, the dates as also the places where such bribes had been given.

Is this permissible under Section 95 of the Representation of the People Act? So far as allegations about corrupt practices are concerned Section 83(1)(b) requires the petitioner to set forth full particulars of any corrupt practice that he may allege including as full a statement as possible of the names of the

parties alleged to have committed such corrupt practices and the date and place of the commission of each such practice. My attention is drawn to the words "as full a statement as possible".

The original allegation was that Respondent No. 1 had given the bribes. In the new schedule a new case is made that such payment was made by Man Singh an agent of the said Respondent. The persons bribed were alleged to be scheduled caste electors but in the new schedule there is no such allegation. Further the places where the alleged bribes had been given are not stated though the stations where they voted are mentioned. It cannot, but he said that a materially altered case is attempted to be introduced by this item of the new schedule B. I do not think that this can be or should be done. The prayer made, therefore, in respect of item (vi) of Schedule B cannot be entertained and sub-paragraph (vi) as it originally stood should be deleted as being vague and indefinite and without necessary particulars.

*Schedule C Item I.*—The petitioner now prays to add the words "in influencing the voters of Patti Halqa". This cannot be done. The original complaint was that though Ram Chand was in the pay of the Public Relations Office, he was working as a polling agent for respondent No. 1. That was one type of corrupt practice. If Ram Chand would come under any one of the items of Section 123(7) of the Representation of the People Act, adding the words that Ram Chand was influencing the voters at a particular place this was a corrupt practice of a different type of altogether which had not been pleaded. The amended item I in Schedule C cannot, therefore, be accepted.

*Schedule C Item* 2.—In the original Schedule the only complaint was that an employee of the Union Government had been influencing the electors to vote. Neither names nor particulars were given. In the new Schedule a large number of names has been put in. The names of persons influenced, the date when it was so done, the manner in which such influence was exercised, the place where the letter from the person complained of had been circulated are all given. Such details introduced at this stage make a complete change of the case as each one of those alleged corrupt practices is to be viewed as a separate offence. The prayer made cannot be entertained.

*Schedule C Item* 5.—The prayer made in this sub-paragraph also is covered by the principles governing the prayer made in sub-paragraph 2 above. The prayer made is rejected.

*Schedule C Item* 7.—Item 7 of Schedule C originally referred to the luring of the electors "by promising to offer Rs. one lakh to Khalsa College, Tarn Taran which has adversely affected the election result against the petitioner favouring the respondent No. 1".

In the new Schedule the petitioner has explained that the promise of this one lakh for raising the Khalsa High School, Tarn Taran to Khalsa College was made in a big gathering in the presence of certain persons.

It is contended on behalf of the respondent that the promise which was made was to a college, but there was no such college in existence at the time when the alleged promise was made. The language used, however, in the original schedule is capable of being the foundation of the petitioner's case that the promise was made for a college to be established. The language used is capable of both the interpretations—to a college which is in existence and a donation for a college to be established. I do not, therefore, see any objection to the clarification of the point by the additional sentence in the first paragraph of item 7 of Schedule C.

Although in the first paragraph of the new schedule reference is made to the promise having been made before certain persons the names of such persons do not appear at the end of the first paragraph.

In the second paragraph of item 7, reference is now made for the first time in the new schedule to certain incidents which had happened after the election and fresh promises which had been made at that gathering in addition to those referred to in the original petition. Such additions cannot be allowed to be made at this stage. The names mentioned at the end of the second paragraph cannot be taken to be the names of persons who were present at the earlier

gathering and before the election. The result, therefore, is that the first paragraph of item 7 of Schedule C in the new draft will be accepted in place of original paragraph 7. The remaining portion of item 7 in the new schedule cannot be accepted.

*Schedule C Item* 10.—The names of persons who had been personally approached and requested not to vote for the petitioner originally consisted of 8 names. 7 more have been added in the new petition. Addition of those names cannot be allowed.

*Schedule C Item* 11.—Item 11 as it originally stood was to the effect that Rs. 5,000/- had been paid by respondent No. 1 for getting votes polled by scheduled caste electors of Tehsil Ajnala and Khandur Sahib in Tehsil Tarn Taran and in Nabi Pur in Halqa Patti. In the new Schedule the petitioner probably with the idea to refer to other places has introduced the word 'etc.' after the names of the tehsils. He has also added the names of some of the voters who were alleged to have been bribed. The original clause was vague and indefinite. Even with the addition of the names in the new Schedule the clause still continues to be vague and without necessary particulars. In view of the vagueness of item, the same must be deleted. The prayer made is rejected and this item is deleted from the petition.

The petition filed is disposed of.

*September* 6, 1957.

(Sd.) RAMA PRASAD MOOKERJEE,
Election Tribunal, Chandigarh.

ANNEXURE II

ELECTION TRIBUNAL CHANDIGARH

*Election Petition No.* 225 *of* 1957

Shri Dayal Singh—*Petitioner.*

*versus*

Shri Surjit Singh Majithia—*Respondent.*

Shri Jatindar Vir Gupta—*Advocate for Petitioner*

Shri Veda Vyas &
Shri Bal Raj Tuli } *Advocates for Respondent.*
Shri S. N. Kapahi

FURTHER ORDER ON THE PRAYER BY THE PETITIONER TO FURNISH FULLER PARTICULARS

10*th February*, 1958

Shri Surjit Singh Majitha was elected during the last General Elections to the Parliament from the Tarn Taran Constituency in the District of Amritsar. This Election petition was filed by Shri Dayal Singh for having the election of Shri Surjit Singh Majithia declared null and void. The latter was named Respondent No. 1 and certain other persons had been impleaded as Respondents 2 to 7. On the very first date that this case was put up before the Tribunal, a petition was filed on behalf of the petitioner for striking off the names of Respondents 2 to 7 and for consequential amendments in paragraph 3 of the petition. The prayer for amendment was not opposed and was allowed.

2. A written statement on behalf of Shri Surjit Singh Majithia was filed on July 22, 1957 and certain objections had been taken *inter alia* on the ground of either vagueness of the allegations made in petition or that fuller particulars should be furnished. On July 25, 1957 the counsel for the petitioner prayed for time to file further particulars. On that date the counsel for the respondent stated that he had no objection to further particulars being filed on the next date of hearing as on the authority of 10 E.L.R 357 The petitioner was accordingly allowed time till the 10th of August to file further particulars, an advance copy of the same being served on the other side. On August 10, 1957 further particulars were filed by the petitioner, a copy of which had previously been served on the respondent. The respondent also filed on the same date simultaneously an additional written statement in opposition to the petition filed by the petitioner that

day. Both parties were heard on the prayer made for receiving further particulars. On September 6, 1957 directions were given as to what extent further particulars would be allowed to be furnished.

3. In view of the fact that furnishing of further particulars was not objected to by the Respondent what the petitioner did was to file a fresh copy of the original petition and annexed thereto Schedules A to C incorporating new particulars as the petitioner wanted to bring in. At the hearing it was held that the petitioner was not entitled to file, after the last date for filing an election petition had expired, a fresh petition. The only question was to what extent the further particulars as in the annexed Schedules would be allowed to be brought in. The petitioner did not press the acceptance of the amended election petition. The arguments on both sides proceeded on the basis of the original election petition taken with the new schedules only which were filed on August 10, 1957.

4. Schedule A filed on August 10, 1957 was stated by both the parties to be indentical with Schedule A which had already been filed alongwith the original election petition. There was no question, therefore, of allowing further or new particulars in respect of Schedule A.

5. Schedules B and C as originally filed with the election petition were re-filed on the 10th August, 1957 with additions and alterations. At the hearing the petitioner was directed by the Tribunal to file a tabular statement indicating the alterations made in Schedules B and C, compared to the contents of the original schedules. After hearing the petitioner for the acceptance of the fuller particulars as contained in the new schedules B and C, counsel for the Respondent was heard. Some of the alterations in the new Schedules were of a formal character and in respect of some others no serious objection was raised. Only in respect of such items in the new schedules to which objections were raised on behalf of the respondent that the petitioner's counsel was heard in reply. The order as passed on September 6, 1957 included consideration of only such items in the amended schedules B and C as had been objected to on behalf of the respondent. After the prayer made by the petitioner to receive the amended schedules had been disposed of on September 6, 1957, on a prayer made by the respondent, it was directed on October 23, 1957 that for facility of reference at the subsequent stages of the proceedings the petitioner was to file before issues were settled a fresh copy of the revised schedules incorporating only such items as had been allowed by the Tribunal in terms of the order dated September 6, 1957. This was agreed to on behalf of both sides. After serving an advance copy of the revised particulars in terms of the order dated September 6, 1957 the same was filed by the petitioner. The respondent was given a further opportunity to file an additional written statement in respect of the amended schedules. This also was duly filed.

6. Thereafter the two following issues were settled as preliminary issues and taken up for consideration as prayed for by both the parties:

1. Have the petition and schedules been properly verified? If not, what is the effect?

2. Is the petition alongwith amended schedules or any part thereof vague and indefinite and if so, should any part of the petition be struck off?

7. The verifications were not in accordance with the provisions of the Code of Civil Procedure and an opportunity was given to the petitioner to put them in proper form This has now been done.

8. When the other preliminary issue was being heard it was contended on behalf of the respondent that the amended schedules as had been filed on November 6, 1957 were on some point or other not strictly in terms of the order passed by me on September 6, 1957. It was in course of such arguments that Shri Veda Vyas prayed for leave to file an application for review of the order dated September 6. Further hearing of the preliminary issue was adjourned to afford an opportunity to the respondent to file such application as he might be advised and to the petitioner to file objection, if any. The preliminary issues to be heard thereafter. Such an application had been filed and an objection also was filed by the petitioner on December 17, 1957.

9. The subject matter of this the latest application by the Respondent is that the petitioner had not been permitted by the Tribunal by its order dated September 6, to amend item 6 of Schedule C. That item of Schedule C as in the revised copy of schedule C filed on November 6, should accordingly be corrected and be as in the original schedule C filed with the election petition. In the alternative it is prayed that if it be held that the order dated September 6, purports to

include a direction to amplify item 6 of Schedule C the said order be reviewed and the further particulars be not allowed to be included in that item. The petitioner has filed an objection to the prayer made by the Respondent. Both sides have been heard at length.

10. In Schedule C item 6 as originally filed along with election petition ran as follows:—

> "That Inder Singh, Patwari, Fatehabad and S. Surain Singh, Patwari Khuwaspur have been similarly mis-using their official position in favour of respondent No. I against the petitioner in influencing the electors."

In the schedule which was filed by the petitioner on August 10, 1957 item 6 is amplified by adding 9 names of electors influenced as alleged in the earlier part of item 6. In the objection which was filed it was denied that Inder Singh and S. Surain Singh had been misusing their official position. The manner and method of misusing has not been stated, nor the alleged activity been disclosed. It is denied that Inder Singh and Surain Singh, Patwaris have worked for the answering respondent in the election in question.

11. As I have indicated already on the prayer of both the parties a tabular statement had been filed at the time of argument for clarifying the additions and alterations proposed by the petitioner. Arguments were advanced on behalf of the respondent and only where objections were raised on behalf of the respondent, such objections were dealt with in the order. The counsel for the respondent stated that the fact that new names had been added under item 6 in Schedule C had been overlooked by him at the time of argument and no objection was raised during argument. Hence the order by the Tribunal had not dealt with the question of such additional names. On behalf of the petitioner this position is accepted, but it is maintained that the revised schedule C was accepted by the Tribunal in place of the original schedule C and the respondent is not entitled to come up at this state.

12. It is not necessary for me to go into the question as to whether an application for review would be maintainable in the present circumstances. From the order dated September 6, paragraph 3 it appears that there was a general direction given for accepting schedule B as filed subsequently subject to the directions contained in this order. But so far as Schedule C is concerned, there is no such specific order. In the absence of such an order it is now for the Tribunal to deal with such of the paragraphs in schedule C as are not specifically dealt with in the order. That is items other than items 1, 2, 5, 7, 10 and 11.

13. There is a lacuna in the order and part of the prayer by the petitioner to furnish better particulars has not yet been disposed of. The Tribunal has no doubt not only the jurisdiction by the duty to deal with the prayers not yet finally disposed of. My attention being drawn to this I would proceed immediately to deal with those items in Schedule C which are not referred to in the order dated September 6 1957. Both parties have again been heard on the subject matter of the items not specifically touched in the order dated September 6, 1957. This present order is to be treated as a part of and in continuation of the earlier order dated September 6, 1957.

14. It is stated by the lawyers on both sides that items 3 and 4 of Schedule C as in the amended schedule are in substance the same as in the original schedule subject to only one change, namely, wherever Respondent No. I appeared in the original Schedule the word 'respondent' only is used in the new Schedule . This is necessary because of the amendment in the petition allowed with the consent of the parties and the modification is not objected to by Respondent.

*Item 6 of Schedule C.*—Under item 6 the names of electors alleged to have been influenced by Inder Singh Patwari and S. Surain Singh, Patwari have been added in the new schedule subsequently filed. These names cannot be allowed to be added at this stage for the same reasons as given for additional names proposed to be added under item 5 of Schedule C in the order dated September 6, 1957. Item 6, therefore, will remain as it was in the original schedule filed with the election petition.

Items 8, 9, and 12 of Schedule C are stated by both sides to be in the same terms as in the original schedule. No change is proposed in the new schedule and therefore, need not be considered separately.

This finally disposes of the prayer made by the Petitioner to furnish further particulars.

In view of the circumstances discussed above no separate order is necessary so far as the application by the Respondent dated November 22, 1957 is concerned.

*The 10th February*, 1958.

(Sd.) RAMA PRASAD MOOKERJEE,
Election Tribunal, Chandigarh.

ANNEXURE III

ELECTION TRIBUNAL CHANDIGARH

*Election Petition No. 225 of 1957*

Shri Dayal Singh—*Petitioner.*

*versus*

Shri Surjit Singh Majithia—*Respondent*

Shri Jatinder Vir Gupta—*Advocate for Petitioner.*

Shri Veda Vyas, Advocate,
Shri Bal Raj Tuli, Advocate,
Shri S. N. Kapahi, Advocate—*for Respondent.*

ORDER ON PRELIMINARY ISSUES

*February* 10, 1958

On November 6, 1957, the following two issues were framed to be taken up as preliminary issues by consent of parties:—

1. Have the petition and the schedules been properly verified? If not, what is the effect?

2. Is the petition alongwith amended schedules or any part thereof vague and indefinite? If so, should any part of the petition be struck off?

The parties were heard in part on November 8, 1957.

2. On November 22, 1957, the respondent filed a petition indicating that certain allegations in the election petition which were alleged to be corrupt practices did not constitute to be corrupt practices within the meaning of the Representation of the People Act. This petition was taken up for hearing on February 7, 1958. The Advocate for the petitioner intimated that no written objection thereto was required to be filed by him and the Tribunal might proceed to consider the same alongwith preliminary issue No. 2 about vagueness and indefiniteness of the amended schedules. Parties were accordingly heard further on February 7, 1958 on the preliminary issues stated above as also on the points referred to in the respondents petition filed on November 22, 1957.

3. *Preliminary Issue No.* 1.—When this preliminary issue was heard on November 8, 1957, it was not disputed on behalf of the petitioner that the petition and the schedules were not properly verified. The petitioner had prayed for an opportunity to put the verifications in proper form. On behalf of the respondent this prayer was not opposed. The petitioner was permitted to give fresh verifications in the correct form. The verifications were corrected and signed again by the petitioner on February 7, 1958. This disposes of preliminary issue No. 1.

4. *Preliminary Issue No.* 2.—It is now necessary to consider whether some of the allegations mentioned in the election petition or any one or more of the items in the relevant portions of the schedules are either vague or irrelevant as also whether any of the particular which are stated to be corrupt practices in the election petition do constitute corrupt practices within the meaning of the Representation of the People Act even if it be found ultimately that the allegations made in the petition and or the schedules are proved.

5. I shall now proceed to deal with different paragraphs in the election petition and of the different items in the schedules which have been objected to on behalf of the respondent as coming within the mischief as stated above.

*Paragraph 4 of the Election Petition taken along-with Item I of Schedule C.*—It is stated on behalf of the respondent that the petitioner ought to have mentioned what particular post was held by Ram Chand and which particular rule

is offended. I do not think such details are required to be given as the identity of the person is sufficiently made clear by giving the name of the father and of the address as also the Department where he is serving. Whether any corrupt practice is committed or not will have to be considered at the proper time during the trial. The objection as to vagueness is over-ruled.

*Paragraph 5 of the Election Petition taken with Schedule A.*—On behalf of the petitioner it is admitted that paragraph 5 taken alongwith Schedule A may be deleted. The detailes given are incomplete and the petitioner does not want to press that point for trial. It is ordered accordingly.

*Paragraph 6 of Election Petition.*—In paragraph 6 it is stated that the respondent had been guilty of corrupt practices, the full particulars being given in "Schedule B annexed herewith". Schedule *B* as mentioned here is clearly a typographical mistake for Schedule C. How this typographical mistake has occurred will be clear if refer to copies of the original schedules attached to the election petition from which it appears that in the heading of Schedule C the letter *B* in Schedule B is altered in ink to *C*. During the arguments before me also at the earlier stages when reference was being made to fuller particulars of the corrupt practices mentioned under paragraph 6 of the election petition, reference was made to the different items under schedule C.

*Paragraph 8(ii) of the Election Petition.*—With regard to paragraph 8(ii) it is contended that the allegations are of a very vague nature. It is so. It is stated in this sub-paragraph that the expense of petrol had been shown to be much less than the amount spent on the quantity actually consumed during the election of the Respondent No. 1. "In fact petrol consumed cannot be less than Rs. 50,000/- worth". This is vague in the extreme and as such cannot be considered in these proceedings.

*Paragraph 8(iv) of the Election Petition*—It is contended on behalf of the Respondent that the statements in this sub-paragraph are not allegations, but are mere expressions of opinion. The language used in this sub-paragraph tend to support the contention by the respondent. From the verification clause it appears that the petitioner does not undertake any personal responsibility about the statements in this sub-paragraph and the statement is believed by him to be true without any indication as to the grounds on which such belief is based. Paragraph 8(iv) must, therefore, be also deleted.

*Paragraph 9 of the Election Petition.*—In paragraph 9 of the Election Petition, certain particulars are given. What was the effect of such allegations, if found to be true, has to be considered at the proper time. This cannot be deleted now.

*Paragraph 10 of the Election Petition.*—In paragraph 10 of the election petition it is alleged that sufficient publicity was not given to the symbols of the candidate by not hanging them at three places as required by Rules. Whether this was an irregularity or not and whether there is any allegation that the election was materially affected by such an irregularity will be decided during the trial. This cannot be deleted now.

Objection has also been raised with regard to the following items in Schedules B and C as being vague and indefinite:—

*Item (iii) of Schedule B.*—The allegation is that no notification was issued by the Government regarding village Samrai for polling booth in 272-Tarn Taran Parliamentary Constituency which seriously affected the result of the petitioner's election. These are sufficient particulars which might be enquired into and cannot be deleted at this stage.

*Items (iv) and (v) of Schedule B.*—Here also particulars are given. If such allegations are proved then it will be for consideration whether the amounts excluded would on inclusion exceed the prescribed limit and whether that would come within the four corners of the provisions of the rules will have to be decided hereafter.

*Item 2 of Schedule C.*—In this item there is no reference to either the place or any other detail where the alleged influencing by the Maharaja is alleged. Item 2 of Schedule C must be deleted.

*Item 3 of Schedule C.*—On behalf of the respondent it is stated that a Sarpanch is not included in the list of Government servant mentioned in section 123(7) of the Representation of the People Act. During the arguments it was conceded by the learned Advocate for the Respondent that in view of the general words used in clause (f) of sub-section (7) of Section 123, this point will have

to be considered after materials are produced as to the nature of work done by the Sarpanch and whether he is a revenue officer or comes within the designation of village officer other than those mentioned in that clause. The particulars of the person as also of the polling booth where he was working have been given. The objection about this item cannot, therefore, be entertained at this stage.

*Item 4 of Schedule C.*—No name of the Sarpanch and Lambardar is given It is vague and indefinite and must be deleted.

*Item 5 of Schedule C.*—This item also is indefinite and vague as neither the place where undue influence is alleged to have been exercised nor any date is mentioned. It is not necessary to consider whether Secretary, Marketing Committee comes within the mischief of a Government officer. Item 5 must, therefore, be deleted.

*Item 6 of Schedule C.*—In item 6 of Schedule C, the names of the two patwaris are given. I have already decided that the names of the electors alleged to have been influenced by the said two persons as given in the new schedules are to be deleted. After such deletion, that what remains in item 6 of Schedule C is vague and indefinite. Neither the place where such official position was misused or the dates of such occurrences are given. Item 6 of Schedule C, therefore, must be deleted.

*Item 7 of Schedule C.*—As regards item 7 of Schedule C, I had already discussed the point in my order dated the 6th September, 1957 and the direction given in that order must stand for the reasons already given.

*Items 8 and 9 of Schedule C.*—It is argued that the statements contained under these two heads are vague. We find that neither the dates of advances are given nor even the period during which such advances had been made are given. These two items, therefore, must be deleted as vague and indefinite.

*Item 10 of Schedule C.*— In my order dated the 6th September, 1957, 7 additional names proposed to be brought in by way of fuller particulars were not allowed. The original names are, however, there. The place where the voters named were threatened and the date also are given. There are sufficient particulars which may be gone into for the purpose of this enquiry.

*Item 12 of Schedule C.*—Reference is made under this item to an alleged compromise between the Congress and Master Tara Singh on behalf of Akalis. It is stated that no details as regards the compromise are given. From the particulars given in item 12 it appears that 23 seats were allowed by the Congress for obtaining the support of Akalis through Master Tara Singh. There are some details therefor. It is next contended that how can the respondent be made liable even if such a compromise had been affected between the two groups. That is a matter for decision at the proper stage in the trial. I would not express any opinion now on the merits on the question. This item cannot be deleted now.

6. This disposes of all the points urged in connection with the two Preliminary Issues as also the application by the Respondent on November 22, 1957.

7. Under Preliminary Issue No. 1 the verifications have been allowed to be put right.

8. Preliminary Issue No. 2 is decided in part in favour of the Respondent.

9. The following portions of the Election Petition and the Schedules are deleted.

(i) Paragraph 5 of the Election Petition with Schedule A.

(ii) Sub-paragraphs (ii) and (iv) of paragraph 8 of the Election Petition.

(iii) Items (2) and (4) to (9) of Schedule C.

10. In paragraph 6 of the Election Petition reference to Schedule *B* is amended to Schedule *C* as a typographical mistake.

11. It may be further indicated that under orders passed on September 6, 1957, items (vi) of Schedule B and (11) of Schedule C had previously been directed to be deleted.

12. The trial will now proceed on the basis of the original Election Petition, subject to the deletions indicated above. Reference will hereafter for the sake of convenience be made to the copies of the Schedules filed on 6th November 1957 subject to the deletions directed above.

13. Issues will now be settled on the Petition and schedules as they now stand.

14. Costs of this hearing will be taken into consideration at the time of the final hearing.

RAMA PRASAD MOOKERJEE,

*February* 10, 1958.

Election Tribunal,
Chandigarh.

ANNEXURE—IV

ELECTION TRIBUNAL, CHANDIGARH

*Election Petition No.* 225 *of* 1957

Shri Dayal Singh—*Petitioner.*

*Versus*

Shri Surjit Singh Majithia—*Respondent.*

Shri Jatinder Vir Gupta,—*Advocate for Petitioner.*

Shri Bal Raj Tuli,—*Advocate for Respondent.*

ORDER ON OBJECTION RAISED ABOUT PETITIONER'S LIST OF WITNESSES

*March* 26, 1958.

Heard the learned Advocates on both sides on the objection filed by the respondent on 12th March 1958 in regard to three of the witnesses cited by the Petitioner. It is accordingly ordered as follows—

1. On February 17, 1958 the Petitioner had filed a list of 15 witnesses proposed to be examined on his behalf during the trial of the Election Petition. On behalf of the respondent objection has been raised in respect of three of the persons so cited. I shall take up the question about the three objected persons in the order in which they appear in the list.

2. No. 7 in the Petitioner's list is Shri Kahan Singh of Tarn Taran, District Amritsar On behalf of the respondent it is pointed out that the name of Shri Kahan Singh had appeared in item 5 of Schedule C to the Election Petition. In terms of the judgment dated February 10, 1958 under order No. 15, item 5 of Schedule C to the Election Petition was found to be vague and indefinite. The said item 5 was accordingly directed to be deleted. The Advocate for the Petitioner concedes that he cannot refer to any relevant fact covered by the issues on which this witness will be able to depose. In this state of things I do not think that Shri Kahan Singh is a necessary or relevant witness in the case. On the materials placed before me, he cannot be examined as a witness in the case.

3. No. 8 in the Petitioner's list is Shri Gurmech Singh of Pidian. It is pointed out that the name of Shri Gurmech Singh does not appear in any part of the Election petition including the schedules as amended and subject to the deletions as ordered on 10th February 1958. On behalf of the petitioner, it is stated that he is instructed by say that Shri Gurmech Singh will be a necessary and relevant witness about the hiring of jeeps in connection with item (i) of Schedule B taken with paragraph 8(i) of the election petition which is included within Issue No. 5. Under such circumstances there is no objection to Shri Gurmech Singh being called as a witness for the petitioner.

4. No 12 in the Petitioner's list of witnesses is Shri Jawahar Lal Nehru, Prime Minister of India, New Delhi. On behalf of the respondent it is contended that in no part of the election petition including the schedules as they now stand is their any reference to Shri Jawahar Lal Nehru, Prime Minister of India and it cannot be ascertained why or how he may be deemed to be a necessary and relevant witness in the case. On behalf of the petitioner it is urged that under Issue No. 8 an alleged compromise between the Congress High Command and Master Tara Singh on behalf of the Akalis will be the subject matter of enquiry. It is stated that

Shri Jawahar Lal Nehru has been cited as a witness who can speak about the compromise as stated above. On behalf of the respondent it is contended that whether Shri Jawahar Lal Nehru was included within what is described as the Congress High Command and also whether he had anything to do with the alleged compromise, if there had been one has to be shown. Until that is shown the said witness cannot be cited at this stage. It is alleged in the election petition that there was a compromise between the Congress High Command on the one hand and Master Tara Singh on behalf of the Akalis on the other and the latter has been cited by the Petitioner as one of his witnesses. It is now for consideration whether the objection by the Respondent to the inclusion of Shri Jawahar Lal Nehru as a witness is well founded.

5. Under sub-section (1) of Section 90 of the Representation of the People Act, the procedure applicable to the trial of suits under Civil Procedure Code are to be applied for the trial of the Election Petition subject to the provisions of this Act and the rules made thereunder. The proviso to this sub-section further gives a discretion to the Tribunal to refuse, for reasons to be recorded in writing, to examine any witness if it is of the opinion that their evidence is not material for the decision of the petition or if the Tribunal is of opinion that the party tendering such witness is doing so on frivolous grounds or to delay the proceedings.

6. Under sub-section (2) of Section 90 of the same Act, the provisions of the Indian Evidence Act subject to the provisions of this Act are attracted in a trial of an election petition. It is, therefore, necessary to examine the provisions of the Code of Civil Procedure and of the Evidence Act to ascertain what test is to be applied in the present case subject to the provisions of the Representation of the People Act.

7. Under Section 5 of the Evidence Act, a party to a suit or proceedings is entitled to give evidence to those fact only which are declared relevant under the provisions of the Evidence Act. The Judge is to allow only such evidence to be given as in his opinion is relevant and admissible. For ascertaining the relevancy of the evidence which a party intends to adduce, the presiding Judge is entitled to ask the party proposing to give evidence as to the manner in which the alleged fact if proved would be relevant and also whether the witness cited is expected to speak on any of the relevant facts arising on the issues to be tried. There is a distinction between relevancy and admissibility. It is only after the issues have been raised and settled that the question of relevancy of evidence can be decided and a decision as to what evidence may or will have to be given or allowed. Questions of relevancy are sometimes questions of some nicety. It is also difficult at times to decide in advance questions of relevancy.

8. As I shall indicate immediately it is not possible or desirable to give a final decision at this stage about the relevancy of the evidence which may be given by Shri Jawahar Lal Nehru.

9. The provisions contained in Section 136 of the Evidence Act taken alongwith the provisions of Order 18 of the Code of Civil Procedure indicate that when facts proposed to be proved are admissible upon proof of other facts, the Court is required to shift the circumstances under which evidence may be allowed before the latter fact is actually brought in by other evidence. When such a question arises when the witness is already in the witness box, an undertaking is taken by the Court from the party or his lawyer to produce at a later and convenient stage evidence as to the fact upon which depends the admissibility of the fact proposed to be proved. If no such proof of the other fact is made available evidence given earlier is to be expunged. It is also a fact that relevancy of testimony may not be demonstrated at the time when evidence is given at an early stage. The position, however, is different when the question is raised at an earlier stage and before the witnesses are called.

10. In the present case, the Petitioner's thesis is that there was a compromise between Master Tara Singh on behalf of the Akalis and the Congress High Command. The first step is to adduce evidence that there was an agreement

between Master Tara Singh and certain persons of the Congress. On behalf of the Respondent it is stated that Shri Jawahar Lal Nehru was not one of those who dealt with such matter but the Congress President and certain other persons. The Petitioner has cited among others Master Tara Singh and on the evidence as may be given by him about the alleged compromise and person or persons with whom he had settled, there will be some material on which to express an opinion whether on the testimony of Master Tara Singh, the evidence of Shri Jawahar Lal Nehru will be a relevant evidence. The evidence of the latter, therefore, would be admissible or relevant on production of evidence about the compromise between Master Tara Singh and the Congress High Command and also on the further proof that such compromise was effected with the so-called Congress High Command which might or might not have included Shri Jawahar Lal Nehru The Petitioner cannot at this stage say definitely whether Shri Jawahar Lal Nehru was one of the Congress High Command with whom the compromise is alleged to have been effected. The relevancy of one alleged fact, therefore, in the present case depends upon another alleged fact to be first proved. The third paragraph of Section 136 of the Evidence Act gives a discretion to the Judge. In the facts of the present case I think that the petitioner should be required to adduce evidence of the second fact that is relation to the alleged compromise with Master Tara Singh and also who constituted the Congress High Command with whom Master Tara Singh had entered into negotiations and settled. The proviso to Sub-section (1) of Section 90 of the Representation of the People Act gives the Tribunal a discretion to refuse to examine any witness under the circumstances mentioned therein. Whether the present case will fall within that proviso and I should or would exercise my discretion, will be considered after the Petitioner has examined Master Tara Singh or evidence is adduced on the points indicated above. I, therefore, direct that no summons be issued at this stage to No. 12 in the Petitioner's list Shri Jawahar Lal Nehru until and after other evidence in the case as indicated above is adduced by the petitioner. I shall decide then whether the objection raised by the respondent is to prevail or not.

11. It may also be stated that Shri Jawahar Lal Nehru is described in the list as Prime Minister of India and there is no indication if as Prime Minister he had anything to do with the election which is in dispute in the present case or the disputes now before the Tribunal The Petitioner states that he has not been cited in his capacity as the Prime Minister, but the latter part is merely the description and the address of the person cited. If and when it is considered whether Shri Jawahar Lal Nehru is to be examined, the Respondent states that it may have to be considered whether he is to be examined here or on commission. That question need not be gone into at this stage.

12. As the objection has partly succeeded, there will be no order as to costs as far as this hearing is concerned.

RAMA PRASAD MOOKERJEE,

Election Tribunal, Chandigarh.

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[No. 82/225/57/104.]

**S.O. 491.**—In pursuance of the provisions of sub-rule (3) of rule 140 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, and in continuation of its notification No. 82/437/57/8827, dated the 2nd July, 1958/Asadha 11, 1880 (Saka), published in the Gazette of India, Extraordinary, Part II—Section 3, sub-section (ii), dated the 24th July, 1958/Sravana, 2, 1880, the Election Commission hereby publishes the judgment of the High Court of Judicature at Bombay, delivered on the 10/11th October, 1958, on the appeal filed by Shri Sudhir Laxman Hendre, Flat No. 52, V Floor, Warden Court, Gowalia Tank Road, Bombay-26, against the Order dated the 31st May, 1958, of the Election Tribunal, Nagpur, in the Election Petition No. 437 of 1957.

APPEAL NO. 294 OF 1958 FROM ORIGINAL DECREE

(Under the Representation of People Act, XLIII of 1951)

Sudhir Laxman Hendre

(Original Petitioner) *Appellant.*

**Versus**

Shripat Amrit Dange and others.

(Original Respondents) *Respondents.*

Appeal against the decision of K. T. Mangalmurti, Esquire, Member of Election Tribunal, at Nagpur, in Election Petition No. 437 of 1957.

Mr. S. W. Dhabe, Advocate—*for the Appellant.*

Mr. A. S. R. Chari with Mr. V. D. Mengde & L. R. Chari,—*Advocates for Respondent No.* 1.

Mr. V. K. Pai,—*Advocate for Respondent No.* 5.

M/s. P. P. Tajane and N. M. Kamble,—*Advocates for Respondent No.* 2.

Coram: Gokhale & Patel, J. J. 10/11th October, 1958.

*Oral Judgment (Per Gokhale,* J.):

This is an appeal under s.116A of the Representation of the People Act, 1951 (43 of 1951) against an order passed by the Election Tribunal, Nagpur, in Election Petition No. 437 of 1957 filed by the appellant Mr. S. L. Hendre. The petitioner was a candidate for election to the House of the People from the Bombay City Central Constituency in the general elections which took place in 1957. In this constituency there were two seats and one of the seats was reserved for the scheduled castes. Including the petitioner, there were in all 7 candidates of whom one of the candidates Mr. Awati representing the Ram Rajya Parishad retired from the contest. The other candidates were Mr. S. A. Dange representing the Communist Party, Mr. C. K. Manay representing the Republican Party Messrs. G. D. Ambekar and N. S. Kejrolkar, who stood on the Congress ticket, while Mr. N. B. Parulekar and Mr. S. L. Hendre, the petitioner, stood as independent candidates. The voting took place on 11th March 1957, but as some irregularity was discovered at one of the polling stations in connection with the placing of ballot boxes of the independent candidates, the Election Commission passed an order directing a repoll in that particular station which took place on 21st March 1957. As a result of the counting of votes, Messrs. Dange and Manay were declared as successful candidates and they secured 3,23,526 and 3,03,875 votes respectively. The two Congress candidates Messrs. G. D. Ambekar and N. S. Kajrolkar secured 1,87,941 and 2,09,769 votes respectively. The votes recorded in favour of Mr. N. B. Parulekar were 15,881 and those recorded in favour of the petitioner were 15,440. As I have already stated, Mr. Awati had retired from the contest just before the election took place.

The present petition came to be filed by the petitioner Mr. Hendre on 1st May 1957 in which he challenged the validity of the election on a number of grounds. It is not necessary in this appeal to refer to all those grounds because ultimately when the election petition was heard by the Tribunal a number of issues were not pressed on behalf of the petitioner. The principal objections raised by the petitioner to the election may be summarised as follows: According to the petitioner, the ballot boxes bearing the name and symbol of the petitioner were kept late, after 11:30 A.M. on 11th March 1957 at a number of polling stations and a repoll was ordered only at the polling station situated at the Victoria Memorial School for the Blind, 73, Tardeo Road. It was further contended that the Returning Officer was in error in starting the counting of votes on 14th March 1957 though a repoll was ordered in respect of the polling station at Tardeo. It was also contended that the Election Commission should have ordered a fresh election or at any rate a repoll in all the 53 stations where the ballot boxes of the petitioner came to be kept late. Then it was further contended that respondents Nos. 1 and 2, i.e., Messrs. Dange and Manay, along with Mr. P. K. Atre, who acted on behalf of these candidates, indulged in a deliberately misleading propaganda through written and spoken statements appealing to the voters to refrain from voting for

the petitioner on the ground that he was a bogus candidate and did not believe in the cause of Samyukta Maharashtra and was put up as a candidate by Mr. Y. B. Chavan, Chief Minister, Bombay State, and Mr. S. K. Patil, President of the Bombay Provincial Congress Committee and it was asserted that this propaganda was false to the false knowledge of the respondents and Mr. Atre and they had no reason to believe it to be true. It was further contended that this propaganda prejudiced the chances of the petitioner's election and created a doubt about the genuineness of the petitioner's candidature and also reflected on the personal character and conduct of the petitioner. On this ground the petitioner challenged the election because such propaganda, according to him, amounted to corrupt practice within the meaning of s.123(4) of the Representation of the People Act, 1951. It was further urged that propaganda was carried on in the 'Maratha' paper owned by Mr. Atre which amounted to undue influence within the meaning of s.123(2) of the Act. It was further alleged that respondents Nos. 1 and 2 supported by Mr. Atre and their election agents, canvassors, employees and supporters, indulged in intimidation and wholesale terrorisation and threats of physical violence, social ostracism, spiritual censure and divine displeasure against certain persons who were canvassing for the petitioner and other candidates who were collaborating with the petitioner and as such there was undue influence on a large scale practised throughout the constituency. Then it was also alleged that certain photographs came to be published in the *Maratha* or daily news paper edited by Mr. P. K. Atre of 11th March 1957 and posters were issued on behalf of the Communist Party which made an appeal to the electors asking them to vote on grounds of community alone and as such came within the mischief of s.123-(3) of the Act. It was also alleged that Mr. Awati, the candidate put up by the Ram Rajya Parishad was given some gratification inducing him to retire from the contest, and, therefore, that would also amount to a corrupt practice under s.123(1) read with the Explanation to that section. It was lastly contended that the petitioner having stood as a candidate and exercised his electoral right as such had also the right to carry on freely without any interference his election campaign and this right of the petitioner was seriously interfered with and on that account also there was undue influence practiced in this election so as to amount to a corrupt practice under s.123(2) of the Act.

As I have already stated, a number of objections which were raised and on which issues came to be framed, were not pressed and no evidence was led on those objections. But the principal objections to which I have referred above and on which a good deal of evidence was led were negatived by the Election Tribunal which consequently dismissed the petition filed by the appellant. That is why the petitioner has come in appeal under s.116A of the Act.

Mr. Dhabe, learned advocate appearing on behalf of the petitioner, has again raised those points in this appeal and he says that the decision of the Election Tribunal was wrong on these principal objections taken by the petitioner. The first point urged by Mr. Dhabe is that the evidence on the record discloses that because of the statements of the polling agents of Messrs. Dange and Manay (the two successful candidates) that Messrs. Hendre and Parulekar had withdrawn from the contest the polling officer Mr. Bharucha did not place the ballot boxes of these two latter candidates in the polling compartment of the Tardeo Polling Station and this continued till 11-30 a.m. on 11th March 1957 and these boxes came to be kept there only when Mr. Hendre came to that polling station when the irregularity came to be discovered. Mr. Dhabe has frankly conceded that this defect occurred only at the polling station at the Victoria Memorial School for the blind at Tardeo Road and his original grievance that these boxes were not kept at 53 polling stations could not be sustained because there was no evidence in support of that statement.

Now, it would appear that this parliamentary constituency was divided into 770 polling stations and each of these polling stations was meant for recording the votes of about 1000 voters, there being about seven lakhs of voters in this Constituency. Under the Representation of the People Act, 1951, every candidate is entitled to appoint an election agent and he is also entitled to appoint polling agents, one such polling agent being appointed for every polling stations. For each polling agent there would be two relievers, but only one of the polling agents or the reliever would be present on behalf of the candidate at the polling station at any time. It would appear from Mr. Hendre's evidence that in all he had about 30 to 35 workers including polling agents at the election and, according to the statement made in the petition, he had it appears 10 polling agents. In the petition it is alleged by Mr. Hendre that the polling agents or respondents Nos. 1 and 2 the successful candidates obtained or attempted to obtain assistance of the presiding officers and polling officers for the furtherance of the prospects of their election by inducing or attempting to induce the presiding officers and polling officers not to keep the ballot boxes of the petitioner in the polling compartments by falsely

informing them that the petitioner had already withdrawn or retired from the said election and that the polling agents were also responsible for defacing the name of the petitioner in the polling compartment in more than one polling station.

As I have already pointed out, no evidence has been led about the other polling stations, but it does appear from the evidence of the polling officer Mr. Bharucha that when the polling opened at 8 a.m. on 11th March 1957, while the ballot boxes of the other candidates were kept in the polling compartment duly sealed at the Tardeo Polling Station, he had not sealed the ballot boxes of Messrs Hendre and Parulekar because the polling agents there had told him and the staff that those candidates had withdrawn, and hence he did not keep their boxes in the polling compartment. He stated that there was no agent of Messrs Hendre and Parulekar present at that time and barring the boxes of these two candidates he kept the boxes of all the other candidates in the polling compartment. He further stated in his evidence that the names of these two candidates were scored out on the placards on the walls, which were put up there by the election machinery. One of these placards was kept outside the polling station and the other on the polling compartment itself and the names of these two candidates were scored out on both the placards. He did not inquire from the polling agents as to when these two candidates withdrew from the contest but later on Mr. Hendre approached him and when he was informed by Mr. Bharucha that he had withdrawn from the contest, he denied the correctness of the statement and then after a talk with the Returning Officer Mr. Badekar, Mr. Bharucha returned to the polling station and placed the boxes of Messrs. Hendre and Parulekar at the polling compartment at about 11-30 a.m. There is no doubt that from 8 to 11-30 a.m. on 11th March 1957 the ballot boxes of Messrs. Hendre and Parulekar were not kept at the polling booth as required under the rules. In Exhibit P-34 which is the report made by Mr. Bharucha to the Returning Officer Mr. Badekar in connection with this constituency, he has stated that the majority of the polling agents present at the station informed him that Messrs. Hendre and Parulekar had withdrawn from the contest. It would seem that this report was placed on the record at the instance of the petitioner. But Mr. Dhabe contends that we should not rely on this report. We are not prepared to accept this argument, because that report itself having been placed on the record at the instance of the petitioner and Mr. Bharucha having given evidence, we do not think that this report can be said to be in any manner inadmissible. It appears from the evidence of Mr. Hendre that when he noticed this defect at that particular station he immediately wrote a letter to the Returning Officer that at this particular polling booth No. 117/9 at 73, Tardeo Road, at 11 a.m. his boxes were not kept in the both and his name on the placard was struck off. But in that letter the petitioner has stated that the presiding officer told him that the polling agents of the Samyukta Maharashtra Samiti as well as of the Congress told him that he had withdrawn from the contest and that is why he was making this complaint. In this connection, he also sent telegram to the Election Commissioner at New Delhi making similar complaint. On the same day the petitioner also wrote a letter to the Election Commissioner and in that letter also he stated that the presiding officer told him that he was advised by the polling agents of the Congress and the Samiti candidates that he had retired from the contest. He, therefore, requested the Commissioner to order re-election for the general seat in the constituency. As a result of this complaint, it would appear that the Election Commissioner passed an order directing the Returning Officer for the Bombay City Central Parliamentary Constituency to have a fresh poll taken only in respect of the polling station No. 127/9 in Constituency. The evidence shows that on this day elections were held both for the Parliament as well as for the State Legislative Assembly and, according to Mr. Manay's evidence, the boxes of the State Legislative Assembly candidates and of the House of the People candidates were in the same tent, though at different places, and there were present polling agents of candidates for the Parliamentary Constituency and polling agents of candidates for the State Legislative Assembly also.

In connection with the order of the Election Commissioner ordering a repoll confined to one polling station, the argument of Mr. Dhabe is that such an action is not warranted by the provisions of the Representation of the People Act. According to Mr. Dhabe, in view of the defect that was brought to the notice of the polling officer as well as the Returning Officer and to the Election Commission the entire election to the Parliamentary seats in this constituency should have been set aside and a fresh election held. Under S.57 of the Act, provision is made for the adjournment of poll at an election in certain emergencies. It is not disputed that S.57 would not apply to the facts of this case. S.58 provides for a fresh poll being taken and it runs as follows:

> "(1) If at any election, any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is in any way tampered

with, or is accidentally or intentionally destroyed lost or damaged, and the returning officer is satisfied that in consequence thereof the result of the poll at that polling station or place cannot be ascertained, he shall—

(a) declare the polling at that polling station or place to be void;

(b) report the matter forthwith to the Election Commission and to the appropriate authority;

(c) with the previous approval of the Election Commission, appoint a day, and fix the hours for taking a fresh poll at the polling station or place; and

(d) notify the day so appointed and the hours so fixed by him in such manner as the Election Commission may direct.

(2) The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll."

It cannot be denied that the failure of the polling officer to keep the ballot boxes of the petitioner at the polling station would not be in terms covered by this section. It is only when a ballot box of any candidate is unlawfully taken out of the custody of the presiding officer or is in any way tampered with or is accidentally or intentionally destroyed or lost or damaged and the returning officer is satisfied that in consequence thereof the result of the poll at that polling station cannot be ascertained, then a fresh poll may be taken under section 58 after declaring the polling at that polling station to be void and with the previous approval of the Election Commission. But it does seem that even where there is a more serious interference with the ballot box of a candidate a fresh poll can be ordered only for that particular polling station where the ballot box is found to have been tampered with or destroyed. The Election Tribunal was of the view that the principle of this section could be applied in the present case where on account of the wrong information given to the polling officer the ballot boxes in the names of the two candidates were not kept till 11-30 A.M. at the polling booth and, therefore, the order of the Election Commission would be justified on the principles of equity, fair play and natural justice. There is undoubtedly a good deal to be said in favour of this view. Mr. Chari, learned Counsel appearing on behalf of the respondents, also relied on Art. 324(1) of the Constitution of support of the action of the Election Commission. Under the article, "the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the Office of President and Vice-President held under this Constitution, including the appointment of election Tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission)". Undoubtedly under this Article, the Constitution has created an Election Commission for the superintendence Direction and control and conduct of all elections to Parliment and the State Legislatures. But the Election Commission must act within the terms of the statute which Parliament may enact under art. 327 of the Constitution making provision with respect to all matters relating to elections. Under Art. 329(b), "no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature". The Representation of the People Act, 1951, having been enacted by Parliament, the powers of the Election Commission must be exercised in accordance with the provisions of this Act and it does seem that the Act itself does not confer on the Election Commission any power to adjourn a poll or to take a fresh poll beyond what is provided under Sections 57 and 58 of the Act.

But even assuming that Section 58 does not in terms provide for a fresh election at a polling station, under circumstances which have arised in the present case, the only section which empowers an Election Tribunal to declare an election to be void is Section 100 of the Act and Mr. Dhabe has, therefore, argued that what has happened amounts to a corrupt practice which must invalidate the election.

Now, Section 100(1), in so far as it is material, provides as follows:

"(1) Subject to the provisions of sub-section (2), if the Tribunal is of opinion—

* * *

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

* * *

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

* * *

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the Tribunal shall declare the election of the returned candidate to be void."

In the present case we are not concerned with the provisions of sub-section (2) of Section 100. It is clear that there is a distinction between the provisions of clause (b) and clause (d)(ii) of sub-section (1) of Section 100. If it is proved that a corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, then the Tribunal has to declare the election of the returned candidate to be void. But if the responsibility of corrupt practice is not on the candidate or his election agent or any person acting with the consent of such candidate or his election agent, but the corrupt practice has been committed in the interests of a returned candidate by a person other than the persons mentioned in clause (b) of sub-section (1) of Section 100, then it must be shown that the result of the election in so far as it concerns the returned candidate has been materially affected, before the Tribunal is empowered to declare the election to be void. It may be observed that the law in England regarding irregularities in election is somewhat similar. In Halsbury's Laws of England, third edition, Volume 14, paragraph 261, at page 150, it is stated as follows:

"An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election if the tribunal is satisfied that the election was notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, was not and could not have been affected by those transgressions. If, on the other hand, the transgressions of the law by the officials being admitted, the tribunal sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether those transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really, been elected by the majority of persons voting in accordance with the laws in force relating to elections, the tribunal is then bound to declare the election void." Islington, West Division, Case (1901), 5 O'M. & H.120. at page 125. In the above case, it appears that at certain polling stations the polling continued even after 8 P.M. which was the closing hour, and a number of votes were recorded after this hour in the ballot box and a number of ballot papers came to be supplied after this hour; and Mr. Justice Kennedy, after stating his views of the law as quoted above observed that "this is the view of the law which has generally been recognised, and acted upon, by the tribunals which have dealt with election matters."

According to Mr. Dhabe, the polling agents of the successful candidates were responsible for making a false statement of fact to the polling officer that the petitioner and Mr. Parulekar had withdrawn from candidature. That would be, therefore, a corrupt practice within the meaning of Section 123(4) of the Act and Mr. Dhabe says that the evidence establishes that the polling agents of the successful candidates were present at the polling station and were responsible for the information given to Mr. Bharucha. It is contended further that at that polling station the polling agents of Messrs. Hendre and Parulekar were not present and only the agents of other candidates were present and, according to Mr. Bharucha, the polling agents had given him the information that both Messrs. Hendre and Parulekar had withdrawn and on that information he had not kept the ballot boxes of these two candidates in the polling compartment. Now, there are several difficulties in the way of accepting this contention of Mr. Dhabe. In the first instance, Exhibit Page 34, the report of Mr. Bharucha, shows that the majority of the polling agents gave him this information. In his evidence before the Tribunal, he said that the polling agents there gave him to understand that the two candidates had withdrawn. If the polling agents of Messrs. Hendre and Parulekar were not there, the polling agents of the Congress candidates as well as those of Messrs. Dange and Manay would be there and, according to Mr. Hendre's letters both to the Returning Officer as well as to the Election Commission written on the very day of the election, his complaint was that the polling agents of both the Congress as well as the Samyukta Maharashtra Samiti candidates had given this wrong information to the presiding Officer. As already stated, Mr. Manay's evidence shows, and there is no dispute on this point, that on that very day elections were also held for the State Legislative Assembly and there were polling agents of candidates standing for that Assembly and that election was held at the same polling station. It cannot, therefore, be said with certainty that the polling agents of the successful candidates Messrs. Dange and Manay were responsible for giving this false information to Mr. Bharucha. Nor is there any evidence whatever on the record to show that this was done with the consent of the returned candidates or their election agents. The petitioner has also stated in his evidence that owing to the illness of his son he had not been able properly to divide the supervision work of polling stations amongst his workers and it was difficult for him even to co-operate with his workers who were scattered over a wide area and who also believed that he had withdrawn. Mr. Dhabe has drawn our attention to the provisions of Section 46 of the Act under which polling agents are appointed by a contesting candidates or his election agent and to Rule 13 of the Representation of the People (Conduct of Elections and Election Petitions), Rules, 1956, published in the Manual of Election Law, second edition, and Form 10 in connection with the appointment of polling agents, and Mr. Dhabe contends that as soon as a polling agent is appointed all his actions must be presumed to be binding on the returned candidate. We are not prepared to accept this argument. As I have already pointed out, when a corrupt practice is committed by a returned candidate or his election agent, then the question of consent does not arise, but if it is committed by 'any other person' which expression would include a polling agent, then it must be shown that the corrupt practice has been committed with the consent of the returned candidate or his election agent. There is no reliable evidence on the record to show that the polling agent of Messrs. Dange and Manay were responsible for giving this false information to Mr. Bharucha and there is no evidence also to show that this was done with the consent of either the returned candidates or their election agents and, therefore, in our opinion, this would not amount to any corrupt practice under Section 100(1)(b) of the Act.

Even assuming that the matter falls under Section 100(1)(d)(ii), in as much as false information was given to Mr. Bharucha in the interests of the returned candidate by a person other than the candidate or his election agent or person acting with the consent of such candidate or election agent, then it has to be proved that the election, in so far as it concerns the returned candidate, has been materially affected, before the Tribunal can declare the election to be void. Mr. Dhabe has frankly conceded that the view of the Tribunal that the defect in the election at this polling station could not have materially affected the result of the election of the returned candidates cannot be challenged, because, as has been already indicated, each polling station was meant to record votes of about 1000 voters and even assuming that all the votes in this polling station were cast in favour of the candidates other than the returned candidates or in favour of Mr. Hendre alone, it would not have materially affected the result of the election.

Mr. Dhabe has also alternatively contended that the defect pointed out, *viz.*, the absence of the ballot boxes of the petitioner and of Mr. Parulekar at the polling booth in question till 11-30 A.M. would amount to improper reception or refusal or rejection of any vote and would come within the mischief of Section

100(1)(d)(iii) of the Act and would also amount to non-compliance with the provisions of the Act and the rules and orders made under the Act and would thus come under Section 100(1)(d)(iv). But that again would be of no assistance to the petitioner because even in that case it must be shown that the result of the election in so far as it concerns the election of the returned candidates, has been materially affected.

That takes me to the principal and the second objection to the validity of the election urged on behalf of the petitioner. This objection may be summarised as follows: It is argued on behalf of the petitioner that a false propaganda was carried on on behalf of the respondents Nos. 1 and 2, the returned candidates, and by their agent Mr. P. K. Atre in his newspaper "Maratha" and false statement were made which would amount to corrupt practice under Section 123(4) of the Act. Objection was principally taken to three kinds of statements which were made against the petitioner: (1) that the petitioner was a bogus candidate and was really set up by Mr. Y. B Chavan, Chief Minister, and Mr. S. K. Patil, President of the Bombay Provincial Congress Committee; (2) that the candidature of the petitioner was financed by the Democratic Research Service which itself was dependent on American money; and (3) that the petitioner was on friendly terms with Mr. Y. B. Chavan before he became Chief Minister, but he left him because he failed to get contracts from Mr. Chavan and he, therefore, parted company from him; but when the elections came he again stood up as a candidate supported and sponsored by Mr. Chavan. It is stated that not only were such false statements published but the candidates and their agent knew them to be false and the statements were in relation to the petitioner's personal character and conduct or at any rate in relation to his candidature and were reasonably calculated to prejudice the prospects of the petitioner's election and, therefore, the successful candidates were responsible for a corrupt practice which would invalidate the election as a whole.

Before I go to the statements to which our attention was drawn in this connection, it is necessary to refer to the relevant provisions of both ss. 123 and 100 of the Act. S. 123 (4), so far as material, provides as follows:

> "The following shall be deemed to be corrupt practices for the purposes of this Act:—
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> • • • • • • •
>
> (4) The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of the candidate's election."

Now, in order to bring the case within the ambit of this provision, the petitioner must prove firstly, that there has been a publication by a candidate or his agent or by any other person of a statement of fact; secondly, the statement of fact must be false; thirdly, the publisher must either believe it to be false or must not believe it to be true; fourthly, the statement must be in relation to the personal character or conduct of the candidate or in relation to his candidature, withdrawal or retirement from contest; and, lastly, it must be a statement reasonably calculated to prejudice the prospects of the candidates' selection. Now, it cannot be disputed that the onus to prove that a corrupt practice has been committed by a candidate or his agent lies on the person seeking to set aside the election on that ground. What is open to objection is a false statement of fact, and such a statement must be with reference to the personal character or conduct of the candidate. In what has come to be known as the North Louth Case, reported in (1911) 6 O'M. & H. 103, it was observed by Gibson J. (page 163):

> "A politician for his public conduct may be criticised, held up to obloquy; for that the statute gives no redress; but when the man beneath the politician has his honour, veracity, and purity assailed, he is entitled to demand that his constituents shall not be poisoned against him by false statements containing such unfounded imputations."

In the Borough of Sunderland's case, reported in (1910) 5 O'M. & H. 53, a similar view was taken by Mr. Baron Pollock, who observed at p. 62 that any false statement, whether charging dishonesty or merely bringing a man into contempt, if it affects, or is calculated to affect, the election, comes within the election statute and in such a case the Court has nothing whatever to do with the question which arises

in cases of libel as to whether there was malice. And the two illustrations which he has given show how statements about what may be regarded as perfectly innocent acts in England, which may be ascribed to candidates at the time of the election may come within the mischief of the election statute. He observes (page 62):

> "supposing any gentleman in a country constituency was to say of his adversary that he had shot a fox, and he said it for the purpose of working upon the minds of the constituency during an election, that would certainly come within the meaning of the Act. Again, if any person in a constituency, where one of the Members was a temperance man, were to say that he had seen him drinking a glass of sherry—a perfectly innocent act—that would also bring him within the Act."

But then it is further stated that a greater difficulty arises when the question has to be considered as to what is a statement of fact and Mr. Baron Pollock stated:

> "A mere argumentative statement of the conduct of a public man, although it may be in respect of his private life, is not always, and in many cases certainly would not be, a false statement of fact."

In another case known as The Cockermouth Division Case, reported in the same volume, i.e. (1910) 5 O'M. & H. 155, this is what Mr. Justice Darling stated (p. 159-160);

> "Now it must be noted that what the Act forbids is this: You shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affects the personal character or conduct of the candidate, and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind this statute would simply have prohibited at election times all sorts of criticism which was not strictly true, relating to the political behaviour and opinions of the candidate."

These remarks of Mr. Justice Darling were made in connection with the publication of a placard by the Respondent in that case which was alleged to have infringed the provisions of the Corrupt and Illegal Practices Prevention Act, 1895. In *Ellis* v. *The National Union of Conservatives*, etc. (1900) Sol. Jour. 750, Justice Buckley was interpreting the expression 'false statement of fact' under the same Act, which conferred on the Court the power to restrain defamatory statement, and the learned Judge observed:

> "The language of the statute is 'false statement of fact', and that language must be used in contrast to a false statement of opinion. The language is not merely a 'false statement', but a 'false statement of fact'. Secondly, the statement must be in relation to the personal character or conduct of the candidate. It must, therefore, be a false statement of fact bearing on a candidate's character or conduct."

In that case, the Court was considering the question of restraining the publication of a poster in which the words "Radical Traitors" were used and Mr. Justice Buckley held that the wording of the poster constituted a statement of opinion rather than one of fact. In *Bayley* v. *Edmunds, Byron and Marshall* (1895) T.L.R. 537, C.A., a charge that the candidate "hypocritically feeling in his conscience that he was doing wrong for the purpose of making large profits for himself, locked his workmen for a certain length of time, and that then, some time afterwards, he found that his conscience reproved him, and resolved he would starve them no longer", was held to be a statement within the mischief of the statute. In *Davies* v. *Ward* referred to in Halsbury, a statement that a candidate would not pay his hotel bill or debts was placed on the same footing. See Halsbury's Laws of England, third edition, Volume 14, page 227, Note (a) which quoted these instances. See also Parliamentary Elections by Schofield, second edition, pages 435 to 438.

It is clear from these decisions that in order to come within the ambit of the term 'corrupt practice' under s. 123(4) of the Act, there must be a false statement of fact by a candidate or his agent which is made in relation to the personal character or conduct of any other candidate Adverse criticism, however severe,

however undignified or illmannered, however regrettable it might be in the interests of purity and decency of public life, in relation to the political views, position, reputation or action of a candidate, would not bring it within the mischief of the statute. The Court in such matters cannot judge these statements in the light of their decency or desirability in so far as they are political statements not calculated to attack the personal character or conduct of any rival candidate. Further, what is objectionable is a false statement of fact and not a false statement of opinion, however unfounded or however unjustified. It is only when the person beneath the politician is sought to be assailed and his honour, integrity and veracity is challenged and such a statement is false that it could be said that a false statement of fact about his personal character and conduct has been made; and once it is established that such a statement was made, the question whether there was malice or not is immaterial. In ascertaining the true nature of the statement made, the Court will have to take into consideration all the surrounding circumstances including the occasion when it was published or made, the person against whom it was made, the person publishing it or making it, the audience or readers to whom it is addressed, as also the precautions or care taken by the publisher to verify the truth or otherwise of the statement challenged. It is in the light of these principles that we have to examine the statements which have been objected to by the petitioner as having been made by Mr. Atre in his paper the "Maratha" on behalf of respondents Nos. 1 and 2.

Taking these statements chronologically, our attention was invited to Exhibit P-2, which is a letter appearing in the Maratha of 2nd February 1957. That letter is signed by one Smt. Vijaya Vinayak Parpatte of Dadar. In that letter, which is headed "S. K. Patil's schemes (designs)", a portion of three lines was objected to by the petitioner. That portion which is exhibited as B-1 in Exhibit P-2 reads thus. "One man had come to inform that he was standing as independent candidate for Lok Sabha from Bombay City Central Constituency. This man's candidature is also Patil sponsored." With reference to this statement, it is to be observed in the first instance that there is no direct reference to the petitioner at all and it has to be remembered that Mr. Hendre was not the only independent candidate in that constituency, but Mr. Parulekar also was an independent candidate. Besides, it is urged by Mr. Chari that this statement is to be found in a letter written by a reader of the paper and, therefore, no responsibility could be attributed to Mr. Atre for the views expressed by a reader. I shall deal with this point a little later.

The next statement is Exhibit P-3 appearing in the Maratha dated 3rd February 1957, headed "Traitor's Front—Front of the people trying to cause split in the Samyukta Maharashtra Samity" and that statement seems to be from the columns in the Maratha containing comments on current events entitled Sword and Shield 'Dhal Talwar' and the passage objected to is: "Really this united front of Hendre, Birje and Desai is living on the support (blessings) of S. K. Patil". According to Mr. Dhabe, the sting in this passage is not in the description of the three independent candidates having a united front but in the description of these candidates being suggested as having been set up by Mr. S. K. Patil. But this statement also would be in the nature of political criticism.

Then I come to Exhibit P-1 which is a letter appearing in the Maratha, dated 14th February 1957 and signed by one Sudhir Chavan, Bombay. The letter is given the title "History of Hendre's candidature" and the following passages including the one marked A-3 from that letter are relied upon:—

> "Hendre was the right hand man of Yeshwantrao Chavan in the movement of 1942, was the well-wisher and sympathiser of Yeshwantrao and used to help the latter when underground with money, means and shelter..... In 1951 Yeshwantrao started for his oath-taking ceremony after he became Minister with the cocoanut and garlands and felicitations from Hendre. After the oath-taking ceremony, Hendre gave Yeshwantrao a big dinner party on the night of the oath-taking ceremony. But Hendre did not get contacts from Yeshwantrao after the latter became a Minister. Therefore Hendre left the friendship, house and name of Yeshwantrao.
>
> The elections came. The election front of S. M. Samiti came into being. Lists of candidates started getting ready. Hendre started efforts that Samiti should nominate him from anywhere in Bombay or elsewhere he wanted a seat to contest; when no seat was vacant he showed his

willingness to contest against Jedhe. But after he came to know that S. M. Samiti was not willing to support him as its candidate he became disappointed (dissatisfied)".

* * * * * * * *

Mr. Dhabe naturally laid emphasis on the wording contained in the portion marked A-3 Exhibit P-1. He contends that though the writer wants to give the history of his client's candidature, in reality there is a veiled attack against his personal character and conduct, and stress is laid particularly on the passage A-3 where there is an insinuation that because Mr. Hendre did not get any contracts from Mr. Yeshwantrao Chavan after he became Minister therefore Mr. Hendre proved false to his friendship and parted company from Mr. Chavan. The question is whether the letter read as a whole is an attack on the political views and reputation of the candidate or is an attack on his personal character and conduct.

The petitioner has denied in his evidence the insinuations made in this letter. His evidence indicates that he came to Bombay in the beginning of 1945 and was interested in the business of Amortex Agency, Private, Ltd., where his wife also was a director. That Company was registered in April or May 1953. Before that, he was the accredited yarn purchaser of Bhiwandi Sari Manufacturers' Association. In 1946 he started an Import and Export Company called Sudhir and Co. and in the middle of 1946 he had established one silk mill called Lokmanya Silk Mills. It appears that an insolvency petition was filed in 1949 against him and he was adjudicated an insolvent in May 1949 and was discharged from insolvency in 1951. From 1951 to 1953 he ran the business of Jagdish & Co. manufacturing surgical dressings on behalf of his wife and, as already stated, Amortex Agency also appears to have been started on behalf of his wife. He admits that he had applied to the Samyukta Maharashtra Samiti for a ticket in or about the first week of January 1957. Therefore, the statement in the letter (Exh. P-1') that Hendre had first made efforts to get the support of the Samyukta Maharashtra Samiti is not unfounded. He admits to have met Mr. Yeshwantrao Chavan on some occasions but there is nothing in his cross-examination which would justify us in holding that he was trying to secure contracts with the help of Mr. Chavan when he become a Minister. Mr. P. K. Atre in his evidence before the Tribunal stated with regard to this letter that it was written by one Sudhir Chavan, but he was not able to say where he lived and he stated that his address would have to be searched. He further stated that he verified the contents of that letter. He was unable to give the time and place of the reception to Mr. Chavan held by Shri Hendre in 1951, but even with reference to that he stated that he verified the information regarding the fact of reception. Then he further stated that he did not know if Mr. Chavan refused to give contracts to Mr. Hendre, nor was he able to give the date or time of the visit of the mother of Mr. Chavan to the house of Mr. Hendre. He stated that he could only state about the fact itself and he did not know this personally and he could not give the names of the persons who gave the information to him. He also did not know personally if Mr. Y. B. Chavan set the petitioner as a candidate or gave him help.

Considering the circumstances under which this letter came to be published and the nature and the suggestions contained in the statement to which objection is taken, we are not prepared to hold that this letter contains merely statements of opinion or facts which Mr. Atre could be said to have believed to be true. A reference to Mr. Hendre not getting any contracts from Mr. Yeshwantrao Chavan when he became a Minister, does not, in our opinion constitute merely a statement of fact about the political reputation of the petitioner, but in our view, it is also an attack on the personal character of the petitioner. There are other statements in that letter which do not seem to be objectionable from that point of view.

Then the next statement to which objection is taken is Exhibit P-5, which appears in the Maratha dated 7th March 1957 also in the same columns containing comments on current events and there it is indicated that "Dr. Naravane's lion of the Legislative Assembly will pounce upon the lion of Hendre, independent candidate for Lok Sabha, as the latter lion is intended to mislead the voters....." This statement, in our opinion, would not amount to any criticism on the personal character of the petitioner.

Then we are referred to a statement (Exhibit P-31) made by Mr. Dange, respondent No. 1, which appeared in the Maratha dated 16th March 1957. It is true that this letter appeared after 11th March 1957 when the voting at all the polling stations had taken place. But the objection of the petitioner to this

statement is that it was made before 21st March 1957 when a fresh poll was to take place in the Tardeo Polling Station. That statement undoubtedly contains a fling at the Election Commission which may not be fair or proper. But the objection of the petitioner is to the suggestion of Mr. Dange that Mr. Chavan and his followers were trying to get an application filed through Mr. Hendre in order to get the election set aside. That, in our view, would not be a statement which would come within the mischief of section 123(4) of the Act.

Then the last statement to which our attention was invited is Exhibit P-5 appearing in the Maratha dated 20th March 1957, which suggested that Mr. Hendre, advised by Mr. Yeshwantrao Chavan and the Democratic Research Service—an institution financed by American money, was standing for Lok Sabha from the Bombay Central Constituency against Mr. Dange. This statement also is purely a political statement.

These are the only statements on which Mr. Dhabe relied in support of his contention that false propaganda intended to lower the personal character of the petitioner was made by the successful candidates. I have already indicated our view that so far as the letter written by Sudhir Chavan (Exhibit P-1) appearing in the Maratha of 14th February 1957 goes, the reference to Mr. Hendre seeking contracts from Mr. Chavan after he became a Minister, and his failure to get them does appear to be an attack on the personal character of the petitioner and the statement would, therefore, come within the mischief of section 123(4). As regards the other statements, the grievance of the petitioner is that he has been described as having been set up by Mr. Chavan and by Mr. S. K. Patil and that his candidature is supported by the American Democratic Research Service, but these statements would not, in our opinion, be open to similar objection.

Now, Mr. Chari on behalf of the respondents contended that we must make a distinction between editorial or semi-editorial comments contained in the Maratha and comments made by readers of the Maratha, whose letters are published by the editor. We are not prepared to accept this argument. If letters are published in newspapers containing statements which are derogatory to persons mentioned in those letters, we do not think that the editor can escape responsibility for what is contained in those letters. It may be that the letters might contain the views of the readers and if it is made clear, as is generally done, that the views expressed in the readers' letters are not necessarily the views of the paper, then no doubt such letters may stand on somewhat different footing. But if the letters contain statements of facts which are false, then we do not think it could be said that the editor would not be responsible for what is stated in those letters. Mr. Atre in fact in his evidence has stated that he took precautions to verify the facts contained in the letters and he stated that when letters are sent to his paper for publication, the facts are verified but not the opinions which are of the writer of the letters himself. Referring to the letter (Exhibit P-2) published in his paper, he stated that he himself and his reporters verified the information, though he was unable to give the names of his reporters, but stated that he himself collected some information. He further stated that he had a strong suspicion that Mr. S. K. Patil gave financial assistance to Mr. Hendre, though he was unable to say when Mr. S. K. Patil gave money to Mr. Hendre, before whom, at what time and on what date. He also stated that when he was in the Congress he had done Congress propaganda in 1945 in company with Mr. S. K. Patil and he personally knew that Mr. Patil financed the sabotaging of opposition candidates. He further stated that he had seen Mr. Hendre in the company of Mr. S. K. Patil at least twice, when he dined in his company in the Chetana Hotel in Bombay and secondly when the petitioner emerged out of the Congress House, Bombay, in company with Mr. S. K. Patil, and that he was justified from this in inferring that Mr. Hendre was hand in glove with Mr. Patil. As I already stated, the petitioner denied that he was set up either by Mr. Patil or by Mr. Chavan. Mr. S. K. Patil categorically denied that he had set up Mr. Hendre as a candidate for the Bombay City Central Parliamentary Constituency and asserted that he had never seen him before the election and did not in fact know the existence of Mr. Hendre. The other independent candidate Dr. Desai, who subsequently withdrew, also denied that he was set up as a candidate by Mr. Patil. It has to be mentioned that though the petitioner, Dr. Desai and Dr. Birje had a sort of understanding in these elections, the latter two having stood for seats to the State Legislative Assembly, Dr. Desai and Dr. Birje withdrew from the contest and the allegation against these candidates was that they were set up by Mr. Patil. But, as already stated, Dr. Desai denied that his candidature was sponsored by Mr. Patil. Mr. Dange stated in his evidence that he did not believe that Mr. Hendre was put up by Mr. S. K. Patil or

Mr. Y. B. Chavan, though he admitted that in his speeches at meetings he expressed his apprehension that the independent candidates would split up votes and thereby indirectly help the Congress and he made a general appeal that all candidates opposed to the Samiti should withdraw. Mr. Lalji Pandse, the election agent of Mr. Dange, admitted that he did not issue any statement repudiating the propaganda in the Maratha alleging that Mr. Hendre was put up by Mr. Patil and Mr. Chavan; and this gains partial support from the evidence of witness Mr. Wable, who was examined on behalf of the petitioner. Mr. Wable stated that he was the editor of the weekly paper 'Shivaner' and at a meeting at Shivaji Park on 9th March 1957 Mr. Dange had said that independent candidates like Shri Hendre should withdraw from the contest and if they did not withdraw, it was well known what would happen next. Mr. Dange further said that Mr. Hendre was not an independent candidate and was set up by the Congress and so he could not be in favour of the Samyukta Maharashtra. But that itself shows that Mr. Dange never alleged in his speeches that Mr. Hendre was either sponsored or financed by Mr. Patil or Mr. Chavan. The evidence however shows that the statement that Mr. Hendre was sponsored by Mr. Patil or Mr. Chavan was a false statement. There is no reliable evidence to indicate that the petitioner received any financial support from the Democratic Research Service alleged to be financed by American money. In his evidence however Mr. Hendre admitted that he knew that there was an organisation of the name of Democratic Research Service, and it has been brought out in his cross-examination that he had an admiration for the economic system of America. In our opinion, that would not justify any inference that the petitioner's candidature was financed by the Democratic Research Service or that this Service itself was financed by American money.

But even taking these statements to be false statements, it does appear that Mr. Atre tried to verify some of the statements contained in the letters published by him and believed that those statements were true. It cannot, therefore, be said that these false statements of facts were known to be false to Mr. Atre or that he did not believe them to be true. Apart from that, in our judgment, describing a candidate as really not independent but as being supported by other parties or prominent persons of other parties would not amount to an attack on his personal character. It is true that Mr. Hendre described himself as an independent candidate. It is also true that according to him, he sympathised with the cause of Samyukta Maharashtra and disagreed with the Congress on several political matters. But even then, if a belief was entertained by his opponents that he was set up by the Congress, that, in our opinion, would not amount to making an attack on his personal character or conduct. Mr. Dhabe contended that describing a candidate as other than what he was standing for would really be an attack on his honesty of character. In this connection, he relied on *Syed Hifazat Ali* v. *Mst. Mohamad Asghar*, Doabia's Indian Election Cases, Vol. I, p. 276, where a candidate set up by the Muslim League was depicted to be in league with the Congress, which was alleged to have paid him Rs. 10,000 and it was further alleged that he had promised to sign the Congress pledge after his success. That case stands on a different footing because the allegation in that case was that not only was the candidate in league with a rival body but a traitor to the body which had adopted him as a candidate.

It is further contended that these statements, though they may not amount to an attack on the personal character of Mr. Hendre, would certainly be false statements made in relation to Mr. Hendre's candidature. Mr. Dhabe argued that the expression "in relation to the candidature" in section 123(4) of the Act is an expression with a wide connotation and cannot be given the restricted meaning attributed to it by the Election Tribunal, *viz.*, the bundle of rights and qualifications which entitle a person to stand as a candidate in a particular constituency as well as the factum of his being a candidate. Under section 79(b) of the Act, a "candidate" is defined as "a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when with the election in prospect, he began to hold himself out as a prospective candidate". The first limb of this definition undoubtedly seems to refer to the qualifications of a person for being nominated as a candidate in any constituency and to the fact of his so nominated. The second part provides that that person will be deemed to get the status of a candidate with effect from the time he begins to hold out as a prospective candidate. But Mr. Dhabe's argument in effect amounts to this, that any false statement of fact made about a person, after he announced his candidature, must come within the ambit of the expression "in relation to the candidature". But that interpretation would not fit in with the subsequent terms

under in section 123(4) which refer to the withdrawal or retirement from contest of any candidate. According to the Concise Oxford Dictionary, "candidature" means "standing for election, being candidate". Speaking for myself, in view of the use of the subsequent expression "withdrawal, or retirement from contest, of any candidate", in section 123(4) of the Act, the term "candidature" must have reference to his qualifications for being nominated as a candidate in a constituency and to his being so nominated in fact. But since we have held that Mr. Atre did not believe these statements of fact to be false, it is not necessary for us to go further into this question.

That takes me to the question whether the statement contained in the letter (Exhibit P-1) by one Sudhir Chavan, published in the Maratha of 14 February 1957, a portion of which we have held to be an attack on the personal character of Mr. Hendre, should justify us in holding that it is a false statement made by Mr. Atre as the agent of the successful candidates. In this connection, Mr. Dhabe strongly relies on Explanation (1) to section 123 of the Act, which says that the expression "agent" in the section "includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. Mr. Dhabe contends that the term "agent" in section 123 cannot be interpreted in the sense it has under the law of Contract, and that under the law applied to elections it must be held to have a wider connotation. According to him, no authorisation or declaration in writing is necessary and the fact of agency will be established by circumstances arising out of the general features of the case, the conduct and connection of the parties, and the subsequent recognition of the acts of the supposed agent or at least an absence of disavowal of such acts, and that the doctrine of agent is carried by election law much farther than in civil and criminal cases. He drew our attention to the observations of Grave J. in Boston (1874) 2 O'M & H. 167 quoted in Fraser's the Law of Parliamentary Elections 3rd Edition, page 73, which states as follows:—

> "With regard to Election Law, the matter goes a great deal further because a number of persons are employed for the purpose of promoting an election who are not only not authorised to do corrupt acts but who are expressly enjoined to abstain from doing so. Nevertheless, the law says that if a man chooses to allow a number of people to go about canvassing for him, to issue placards, to form a committee for his election, and to do things of the sort, he must, to use a colloquial expression, take the bad with the good. He cannot avail himself of these people's acts for the purpose of promoting his election and then turn his back or sit quietly by, and let them corrupt the constituency."

He also relied on Hemmound's observation in his book, "The Indian Candidate and Returning Officer", at page 57, to the following effect:—

> "In the ordinary sense of the word, a man cannot easily make another his agent without having his eyes fully open to what he is doing. But he may create an agent in the election sense of the word without being conscious of what is being done and in fact, in such a manner that when the person is ultimately decided to be his agent nobody is more astonished than himself."

Mr. Dhabe further argued that in case this principle is accepted, then it must necessarily be held that newspapers which make special propaganda for the election of a particular candidate could, in certain circumstances, be treated as the candidate's agents for purposes of election law; and in this connection reliance was placed on the following observation of Blackburn J. quoted in Rogers on 'Elections' (P. 391):—

> "A candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object." [Wakefield (1874) 2 O'M & H 103]. Parker in his "Election Agent and Returning Officer" has stated as follows (Pages 311 and 312):—
>
> "It is not necessary, in order to prove agency, to show that the person was actually appointed by the candidate, it is sufficient to show the conduct or connection of the parties, the recognition by the

candidate of the acts of the person alleged to be an agent, or the absence of any disavowal of such acts. The various acts proved to establish agency may each, taken singly, be insufficient, and yet taken as a whole, may be held to prove agency conclusively. Where the agency cannot be distinctly proved, it may be inferred or implied from the acts of the candidate, and from other facts and circumstances."

"Every instance in which it is shown that, either with the knowledge of the candidate, or of his appointed agents, a person acts at all in furthering the election for him, or in trying to do so, in some evidence to show that he is an agent; and if a person assumes to act for a candidate, and the latter accepts his services, he makes such person his agent. To establish agency, therefore, it may be unnecessary to show that the election agent himself knew of and accepted services voluntarily tendered: knowledge and acceptance by other persons in control of the election may be sufficient."

These passages and the observations of English Judges on the legal aspect of agency in elections would appear to support Mr. Dhabe's contention. Reference may also be made to Schofield's Parliamentary Elections, Second addition, pages 201 to 205 where after quoting numerous passages from decision in election cases, it is observed that though the law of agency as applied to election petitions has been differently expressed by different learned judges, all agree that the relation is not the common law one of principal and agent, but the candidate may be responsible for the acts of one acting on his behalf, though such acts are beyond the scope of the authority given, or indeed in violation of express injunction (p. 205). In our opinion, this would represent the correct legal position regarding agency in elections.

Mr. Dhabe says that there is ample evidence on the record to establish that Mr. P. K. Atre was an agent, so far as election propaganda was concerned, of both the candidates Messrs. Dange and Many, who stood on the Samyukta Maharashtra ticket. It is not disputed that Mr. Dange was the Chairman of the Samyukta Maharashtra Election Samiti and Mr. Atre was a member of that Election Samiti. The Samiti consisted of various political parties of Maharashtra and the Communist Party was one such constituent party of which Mr. Dange is a member. There is also no dispute that Mr. Manay was a member of the scheduled Castes Federation, now known as the Republican Party, and stood for a reserved seat on behalf of that party in the same constituency. Mr. Atre admits that the Samiti had no single political symbol, as it is a joint front of different political parties. The Samyukta Maharashtra Samiti had given badges to its workers and volunteers. There was no particular propaganda in favour of a particular candidate. There was general propaganda. Such of the workers who were carrying on active work were wearing the badges of the Samiti. It was also admited by Mr. Dange that he and Mr. Atre jointly addressed some election meetings. He stated that when his candidature was accepted by the Parliamentary Board of the Samyukta Maharashtra Samiti Mr. Atre was not present. He explained that there were two types of members of the Board-regular members and invitees and Mr. Atre was only an invitee member. He also admitted that one Vinayak, Bhave was a member of the Communist Party and at the time of the election he was doing voluntary service in the office of the Maratha Newspaper. He also stated that the Samyukta Maharashtra Samiti had nothing to do with the Maratha which was Mr. Atre's proprietory concern. Mr. Atre also stated in his evidence that the Maratha was his sole proprietory concern, but he admitted that propaganda was carried on in the Maratha on behalf of the Samyukta Maharashtra Samiti and that he was carrying on propaganda in favour of Messrs Dange and Manay. It would appear from Mr. Dange's evidence that the Samyukta Maharashtra Samiti as such had no official organ of its own. In his cross-examination Mr. Dange admitted that he contributed, in the beginning of January 1958, Rs. 3000/- to the Maratha for purchasing a Rotary Machine, as his contributies to the Rotary Fund started by the Maratha. On this evidence, the Election Tribunal held that Mr. Atre was an agent of Messrs. Dange and Manay so far as speaking at public meetings was concerned, but he was not an agent with regard to propaganda that was carried on on behalf of these two candidates in the columns of the Maratha.

The finding of the Election Tribunal that Mr. Atre could be regarded as an agent for the purpose of addressing meeting has not been challenged before us and it seems that it cannot be so challenged because admittedly a political campaign by way of public meeting was being carried on on behalf of the candidates who had obtained Samyukta Maharashtra Samiti tickets. The question is whether Mr. Atre could be also regarded as an agent of the two successful candidates when he

carried on propaganda in his paper Maratha on behalf of the Samyukta Maharashtra Samiti candidates. It has been admitted by Mr. Lalji Pendse, the election agent of Mr. Dange, that there was a joint office of the Samyukta Maharashtra Samiti for propaganda on behalf of the candidates. Mr. Atre, as we have already seen, has also stated that the propaganda was carried on in the Maratha which was his sole proprietory concern, on behalf of the Samyukta Maharashtra Samiti candidates and he was accordingly carrying on propaganda in favour of Messrs. Dange and Manay also. He was a member of the Samiti of which Mr. Dange was the chairman. Now, being a member of a candidate's election committee has been held to be strong evidence of agency. See Halsbury's Laws of England, third edition, Volume, 14, page 171, para 304. In the case of elections as we have already seen, the expression "agent" has to be given a wider interpretation and, in our judgment, therefore the Tribunal's view that Mr. Atre was not an agent of Messrs. Dange and Manay with regard to election propaganda is not correct. We must, therefore, hold that so far as Exhibit P-1, the letter by Sudhir Chavan, appearing in the Maratha of 14th February 1957 is concerned, there was a publication by an agent of the candidate and the portion A-3 objected to in that letter contains a false statement in relation to the personal character of the petitioner Hendre. The evidence would also indicate that Mr. Atre could not have believed the statement to be true, and that statement was undoubtedly calculated to prejudice the prospects of the petitioner's election. We must, therefore, held that so far as the portion A-3 in Exhibit P-1 is concerned, there has been a corrupt practice with the meaning of s. 123(4) of the Act.

That takes me to the question whether the election of the returned candidates has to be declared void under section 100 of the Act. Mr. Dhabe's contention is that this statement in Exh. P-1 would amount to a corrupt practice and would come within section 100(1)(b) of the Act inasmuch as, according to him, it is committed by a person with the consent of the returned candidate or his election agent. In this connection, our attention was invited both by Mr. Dhabe as well as Mr. Chari to section 100, before its amendment in 1956. Under the old section 100(2)(b), the Tribunal had to arrive at a finding that the corrupt practice had been committed by a returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent; so that under the section, before its amendment, a corrupt practice committed by any agent would have come within the mischief of this section. If it was not committed by either the returned candidate or his agent but by any other person, then, before it could affect the election, it had to be with the connivance of the returned candidate or his agent; and connivance undoubtedly means, in the context, consent, express or implied. After the amendment, the section has substituted for the expression "agent" the expression "election agent", so that a corrupt practice has to be committed by a returned candidate or his election agent; and then no question of consent naturally arises. But if it is a corrupt practice, which has not been committed by a candidate or his election agent, then before it affects the election, it has to be proved that it has been committed by any other person with the consent of the returned candidate or his agent. At one stage, Mr. Chari attempted to argue that the word "consent" must necessarily imply express consent that he had to concede that consent may be express as well as implied. Since Mr. Atre was not the election agent of respondent Nos. 1 and 2, the question whether he was an agent for the purpose of propaganda is not really relevant for the purpose of this section. Before Mr. Dhabe's client can take advantage of section 100(1)(b) he will have to prove that Mr. Atre, in publishing the impunged statement in Exhibit P-1, had either the implied or express consent of Messrs. Dange and Manay or their election agents. Now, Mr. Dhabe contends that we must look to the circumstances under which this publication was made. It is undoubtedly true that the Maratha was carrying on a campaign in favour of all the candidates set up by the Samyukta Maharashtra Samiti. But the question is whether all these candidates will be bound by any statement that appeared in the Maratha. Just as Mr. Atre would be an agent for the returned candidates in respect of the propaganda carried on in the Maratha in their favour he would also be an agent for the other candidates set up by the Samyukta Maharashtra Samiti. In an election of this type, the news paper is bound to publish statements and appeals and everything that may be published in the newspaper would not bind the candidate, unless it is proved that there was either implied or express consent of either the candidate or his election agent. Mr. Dhabe argued that though undoubtedly the onus in such cases is on the person challenging the election, the Court may have regard to all the circumstances in which the propaganda on behalf of the successful candidates is carried on. In support of his argument Mr. Dhabe relied on an observation of the Supreme Court in Jagan Nath v. Jaswant Singh A.I.R. 1954 S.C. 210, where it was observed that it is always to be borne in mind that though the election of a

successful candidate is not to be lightly interfered with one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices Though this observation has been made in connection with a different set of circumstances, the principle underlying this observation has to be accepted in deciding election cases In this connection Mr Chari relied on the meaning of the word 'consent', as given in Wharton's Law Lexicon, as being 'an act of reason accompanied with deliberation, the mind weighing as in a balance the good or evil on either side Consent supposes three things—physical power, a mental power, and a free and serious use of them" Reference may also be made in this connection to a passage from Halsbury's Law of England, third edition, Volume 14, page 170 paragraph 301, which is to the following effect

> "here non-interference on the part of the candidate with persons who, feeling interested in the success of the candidate, may act in support of his canvass is not sufficient to saddle the candidate with any unlawful acts of theirs of which the candidate and his election agent are ignorant."

Taunton (Borough) Case (1874) 2 O'M & H 66 at 74 There is nothing on the record of this case which would indicate that either the returned candidates Messrs Dange and Manay or their election agents had knowledge about this letter (Exhibit P-1) appearing in the Maratha of 14th February 1956 No question or suggestion seems to have been put either to Mr Dange or Mr Manay or Mr Lalji Pendse, Mr Dange's election agent, on this point We may also observe that with regard to some of the other statements also, about which grievance was made but which we have held to be not false statements of fact affecting the personal character or conduct of the petitioner, there is no evidence to show that either of the returned candidates or their election agents had knowledge about these statements If that be so, it cannot be held that the statement in Exhibit P-1 has been made with the consent, express or implied, of respondents Nos 1 and 2 or their election agents Giving our most anxious consideration to this question, we must hold that even this statement would not fall within section 100(1)(b) of the Act

Dr Dhabe has not relied on section 100(1)(b)(ii) of the Act he has frankly stated that there is no evidence that this corrupt practice even though it may have been committed in the interests of the returned candidate, would have materially affected the result of the election in so far as it concerned and returned candidates

That takes me to the third and fourth points which have been urged before us by Mr. Dhabe. He has relied on three exhibits, *viz*, Exhibits P 26, P-48 and P-27 (which is the same as Exhibit P 53) for the purpose of his argument that the election is vitiated by corrupt practice on account of undue influence and also on account of a systematic appeal being made by the respondents and their agents to electors to vote on grounds of community, which statements, according to Mr Dhabe, would fall within the ambit of section 123(2) and (3) of the Act I will take both these points together because reliance is placed on the same three exhibits regarding these points In this connection, our attention is drawn to Exhibit P-48, which is a statement which appeared in the Maratha dated 6th March 1957, over the signature of Mr Dange as the president of the Samyukta Maharashtra Samiti The statement reads thus: Brother workers, in the name of Maharashtra and 105 martyrs do not go out on 11th without giving votes and do not betray Samyukta Maharashtra" We fail to see how such an appeal would either be an appeal to the voters to vote on grounds of community or how it would amount to undue influence The appeal is addressed to the workers and it cannot, therefore, be obviously said that it is an appeal to any particular community This appeal is published in the Maratha just before the date of the election which was 11th March and the same was declared to be a holiday The workers were, therefore enjoined not to go out without recording their votes. Mr Dhabe says that this statement refers to the duty of the workers "in the name of Maharashtra and 105 martyrs" to give their votes on the 11th We do not think on that ground it would either amount to any threat or injury of any kind or social ostracism and excommunation or expulsion from caste or community or of the electors being threatened that they would be objects of divine displeasure or spiritual censure, as Mr Dhabe tried to suggest relying on the provisions of s 123(2), Proviso (a) (i) and (ii), of the Act Nor can this appeal be regarded as an appeal to voters to vote on grounds of community or religion.

Then our attention is invited to Exhibit P-26, which is an issue of the Maratha dated 11th March 1957. Objection is taken to several passages in this issue. There is, first of all, the appeal to "Lions of Maharastra, make the Congress bullocks bold away". There is also an appeal, "Saints and warriors of Maharashtra, give us your blessings". Then there is also an appeal to the following effect: "Worship the Shivashakti (power of Shivaji) of Maharashtra with the 'bel' (leaves) of your votes". Then there is an appeal headed "Vow of the Maratha" with a picture below which are the words: "Where is the black stone of the great bilingual? I reduce it to powder by the hammer of votes." Then on the third page of the issue, photographs of persons who were killed in the Bombay firing are published and on the top of the page there is a heading "Marathas of Bombay, take revenge of this devilish murder". Below these photographs are the words, "The Congress ballot box is besmeared with the blood of the martyrs." On the fourth page of the issue there is a picture of a hand with the Congress ballot box on the palm and on the top of the picture are the words: "Have you seen this ballot box of the Congress?" and at the bottom are the words "It is smeared with the blood of the Marathas". The Tribunal was disposed to take the view that all these were political statements, however strong the words used therein, and we are not disposed to take a different view of either the statements or the pictures published in this issue.

Exhibit P-27, which is the same as P.53, is a poster issued admittedly by the Communist Party on the same date, *i.e.*, 11th March 1957, and on the top of this poster there are words expressing "salutation to the immortal martyrs who sacrificed their lives in the cause of Samukta Maharashtra and Mahagujrat" and at the botton there is an appeal that the sacrifice of these martyrs should be remembered and the voters should make the Samyukta Maharashtra Samiti successful. That also, in our opinion, is in substance a political appeal to the voters. Mr. Dhabe contended that both Exhibit P-26 and Exh. P-27 contain ghastly pictures and were bound to revive the memory of firings in Bombay and would, therefore, amount to undue influence or a direct or indirect interference with the electors' right to freely exercise their power to vote. It cannot be denied that these pictures were meant to be an appeal to the sentiments of the voters, but we are not prepared on that account to say that the publication of these pictures in the issue of the Maratha or the publication of the poster on the voting day amounted to undue influence which constituted any direct or indirect interference with the electors' right to freely exercise their power to vote.

Alternatively, Mr. Dhabe contended that the reference to the Marathas of Bombay in Exhibit P-26 was an appeal to the voters to vote in favour of the Samiti candidates on grounds of community Mr. Dhabe said that it might either be an appeal to the Maratha community as such or an appeal to the Maratha speaking citizens of Bombay. But these, according to Mr. Dhabe, it would come within the mischief of section 123 of the Act. He further argued that we should not, in considering this appeal, construe the term 'community' in the popular sense of that term, and in this connection he relied on the case of Yeshvantrao *vs.* K. T. Mangalmurti (1957) 60 Bom. L.R. 353, where a Division Bench of this Court construed the expression "all the contesting candidates" in section 82(a) of the Act as meaning not merely those candidates who contested at the election, but also those candidates who contested for the election, and the Court rejected the meaning of the expression "contesting candidate who retired from the contest" as not being a contesting candidate in the popular acceptation of the term. That was undoubtedly a case on different facts. In construing the word "community" in section 123(3) we must no doubt give the word its natural meaning if it can bring out the real intention of the Legislature. In this connection, Mr. Chari referred us to a passage from Maxwell on the Interpretation of Statutes, 10th edition, pages 19 and 20, Mr. Chari contended that we must construe the term "community" bearing in mind the rule in Heydon's case which required consideration of the law as it stood when the statute to be construed was passed, the nature of the mischief or defect for which the old law did not provide and the remedy and the reason for it which was provided by the subsequent statute to cure that mischief or defect. In this case, there is no amendment in the wording of section 123(3) which is the same as the wording of the old, section 124(5) prior to the amendment of the Act in 1956. Before the said amendment, this kind of corrupt practice was classed as a minor corrupt practice, as distinguished from major corrupt practices included in section 123 of the old Act. That distinction between major and minor corrupt practices was done away by the amendment of the Act in 1956. Mr. Chari contends that we ought note to construe the term "community" so as to include therein a community of persons speaking a common language. According to him, what Parliament intended was the avoidance of rousing of communal or religious

passions to influence voting at elections and that, he contends, must be understood in the sense it was always understood in this country so far. Now, the Representation of the People Act was passed in 1951 and it was amended in 1956 and Mr. Dhabe's argument in reply to Mr. Chari's contention is that in 1956 circumstances had considerably changed on account of the re-organisation of States and the agitation which ensued in connection with it, and he contends that the term "community" would also, therefore apply to a 'linguistic' community and reliance is placed on the principle of construction which allows the extension of the language of a statute to new circumstances In this connection, reference may usefully be made to a passage from Maxwell on the Interpretation of statues, 10th edition, at page 79:

> "Except in some cases where the principle of excessively strict construction has been applied, the language of a stature is generally extended to new things, which were not known and could not have been contemplated by the legislature when it was passed. This occurs when the Act deals with a genus, and the thing which afterwards comes into existence is a species of it."

There is some force in what Mr. Dhabe has contended Now, in sub-section (3) of section 123 of the Act, what is regarded as objectionable is a systematic appeal to the voters to vote or refrain from voting on the ground of caste, race, community or religion. In our judgment, the term "community" cannot in the context be confined to a religious community only.

If we were to construe the appeal in the Maratha of 11th March 1957 as an appeal to the "marathas' as a caste, then undoubtedly it would fall within the mischief of this section. But it cannot be so interpreted. The Maratha itself is a newspaper which is obviously intended to be read by the Marathi speaking and Marathi knowing persons, and Mr. Atre has admitted that the average circulation of his daily paper in January, February and March 1957 was about 40,000 copies per day. The pictures published in that paper as well as in the posters issued by the Communist Party contain pictures of Gujrati victims of police firings, who appear to be described as being residents of Ahmedabad. The pictures of other victims also are not confined to persons belonging to the Maratha caste or community. Exhibit P-27, the poster issued by the Communist Party appealed for the unification of Maharashtra and Mahagujarat It is not disputed that candidates standing on the Samukta Maharashtra Samiti ticket were drawn from all communities speaking Marathi and non-Marathi languages. In these circumstances, we are not prepared to hold that either these appeals were intended to be addressed to the caste and community of Marathas or intended to in an appeal to the Marathi speaking electors to vote on the ground of their being a separate community. It is possible to construe these appeals as calling on the voters to vote in favour of the political principle, of formation of separate States of Maharashtra and Mahagujarat by voting in favour of candidates pledged to that principle though undoubtedly they were intended to make an intensely emotional appeal to the voters. We agree, therefore, with the finding of the Election Tribunal that these publications cannot fall within the mischief of sub-section (3) of section 123 of the Act.

Besides, it has to be remembered that Exhibit P-26 as well as the poster Exhibit P-27 were issued on the election day, that is to say, on 11th March 1957, and we agree with the view of the Election Tribunal that these two publications on the election day would not amount to a systematic appeal contemplated under section 123(3) of the Act We are not prepared to accede to Mr Dhabe's argument that because of the publication of the pictures both in Exhibit P-26 and Exhibit P-27 on the election day, we should hold that there was a systematic appeal to the voters to vote on the ground of community. The expression 'systematic' would involve an element of planning, of method, of some continuity or persistence and admittedly Exhibits P-26 and P-27 or P-53 were published on the day of the election only. The argument, therefore, that the publication of these Exhibits constituted either undue influence or a systematic appeal to the voters to vote on the ground of community must, consequently, fail.

That takes me to the next argument of Mr. Dhabe that the present election has been vitiated by a corrupt practice falling within section 123(1) of the Act, and Mr. Dhabe says that Mr. Awati, the candidate who stood on the Ram Rajya Parishad ticket, was induced to retire from the contest by reason of a reward offered to him by publication of his photograph in the Maratha dated 12th March 1957. That issue of the Maratha is Exhibit P-30. It may be mentioned that in the trial Court it was also alleged by the petitioner that Mr. Awati was offered a bribe of Rs. 1,000 by one Vinayak Bhave or somebody else on behalf

of the Samyukta Maharashtra Samiti. Mr. Awati denied that allegation and stated that the statement that he got Rs. 1,800 from Vinayak Bhave or anybody else was false. He characterised it as a creation of the petitioner's brain. He further stated that he had told the Ram Rajya Parishad that he could not afford to incur the expenses of election and as the Parishad was not giving him the necessary aid he would retire; and that was the sole reason of his retiring from the contest. The Tribunal, therefore, rejected the allegation of the petitioner that there was corrupt practice on the part of the successful candidates in inducing Mr. Awati to retire from the contest by giving him Rs. 1,800. Mr. Dhabe has very properly not pursued that allegation in this Court. But he contends that the publication of Mr. Awati's photograph on the day after the election giving him a prominent place and showing that he had supported the Samiti candidate, amounted to gratification as defined in the Explanation to section 123(1). Below the photograph appearing in the Maratha it was stated that Mr. Awati who had withdrawn his candidature was the first to give his vote to the Samiti candidate, and Mr. Awati was to be seen in the photograph at the polling station at Bhivaji Mandir at Dadar. Mr. Awati in his evidence stated that the representatives of the "Maratha" had not come to him to take his photograph and nobody had asked him to attend to give the first vote at the election. He went of his own accord to the Shivaji Mandir Polling booth. He himself, his wife and daughter-in-law went to give their votes, but he did not pose for his photo for any photographer. He did not disclose to anybody for whom he was voting or for whom he voted because it was a secret poll. Then he explained that as there was only one woman voter, who was ahead of him to go inside for voting, and as the number of that voter could not be traced, he was given the ballot paper first. Mr. Atre in his evidence also stated that he did not know for whom Mr. Awati voted, that he was not present when he voted and that the photographer of the 'Maratha' took this photo as those were his standing orders. He explained that it was stated in Exhibit P-30 that Shri and Smt. Awati voted for the Samiti candidate because his correspondent told him that they had in their hands Samiti cards. We do not think that the publication of this photograph amounts to any reward or gratification to Mr. Avati at all. The explanation to sub-section (1) of section 123 of the Act refers to "all forms of entertainment and all forms of employment for reward". It is really difficult to appreciate the argument that the publication of Mr. Awati's photo on the next day after the election would amount to a corrupt practice within the meaning of the Explanation to section 123(1) of the Act.

That brings to the last point urged on behalf of the petitioner. Mr. Dhabe contends that the petitioner was a candidate at the election and having announced his candidature and being nominated as a candidate at the election he had a right to canvass votes in his constituency and to carry on a political campaign in favour of his candidature without being hampered in any manner by the supporters of the other candidates and it is the contention of the petitioner that all his canvassers as well as the canvassers of candidates who collaborated with him, *viz.*, Dr. Desai and Dr. Birje, were hampered in the work of canvassing votes. Section 79(d) of the Act defines an electoral right as "the right of a person to stand or not to stand as, or withdraw from being, a candidate, or to vote or refrain from voting at an election". Now there is no dispute that the petitioner had exercised his electoral right of standing as a candidate. But the right claimed by him to canvass or to carry on propaganda in support of his candidature cannot be said to be an electoral right, though it would undoubtedly be a right incidental to his electoral right to stand as a candidate, as defined in section 79(d) and Mr. Chari has not disputed this position. But the question is whether this incidental right has been in any manner infringed either by the successful candidates or by their agents. On this point, there is the evidence of Dr. Desai and witness Vasatsalla Patil, to which our attention was drawn. Dr. Desai, who was a candidate for the State Legislative Assembly and who it appears was working with the petitioner, has stated that when he had begun to get more and more support from his constituency an attempt was made on behalf of the Samiti, especially by the Communist Party, to send a ladies' deputation to him headed by Mr. Dange's daughter asking him to withdraw his candidature in favour of the Communist candidate contesting from the Sewari Constituency. He stated that he gave a hearing to the deputation, explained his stand why he was contesting the election and made a counter-request to the deputation that they should ask the Communist candidate to withdraw in this favour since he was also for Samyukta Maharashtra as much as the Communist candidate. Then he says that however whenever he went to canvass support, people began to behave in a hostile manner towards him and even lady workers who were working on his behalf were badly treated and he

explained that by 'bad treatment' he meant that his volunteers were surrounded by people when they went to chawls. Then he further stated that a large crowd of about 500 persons headed by one Inamdar surrounded him and his canvassers and would not allow them to move at all and they snatched away all the handbills from their hands and tore them to pieces and trampled them under their feet. The crowd started blowing bugles, shouting and making all kinds of allegations against them. This was his experience, according to his evidence, in other chawls and therefore he retired from the contest on the day that he was entitled to do. He admitted that along with his handbills, the handbills of Mr. Hendre were also given for distribution to his workers, but those handbills were distributed where there was no opposition and not distributed where there was opposition. The evidence of witness Vatsala Patil is of a similar type. After considering the evidence of these two witnesses, as well as the other witnesses, the Tribunal came to the conclusion that the right of the petitioner, even assuming it to be a right, was not infringed in any serious manner. Mr. Dhabe has frankly admitted that the evidence led by the petitioner does not connect the disturbances caused in the petitioner's canvassing with any of the returned candidates or with their election agents. If that be so, we do not think that we can hold that either there has been in fact any infringement of the incidental right, which the petitioner claims to canvass support for his candidature or that it amounted to undue influence or interference on the part of successful candidates with the exercise of that right.

But Mr. Dhabe very strongly relied on Exhibit P-29, which is a photo published in the Maratha dated 6th February, 1957 of a board that was put up by the residents of B. D. D. Chawl No 19. It referred to the 105 martyrs in the Samyukta Maharashtra movement, for whose deaths, according to it the Congress was responsible, and it urged that the Congress volunteers should not visit the chawl in question. Now, while publishing this photograph, it is stated at the bottom of the picture that the voters should follow the example of the residents of the that particular chawl. There is no evidence on the record that this board was put up by anybody on behalf of Messrs. Dange and Manay and it would appear that it was put there by the voters themselves. But Mr. Dhabe contends that the appeal by the Maratha that the voters should follow the example of the residents of the chawl constitutes an attempt at interference with the electoral free exercise of their right to votes. We are not prepared to accept this contention. The right to exercise their votes freely also assumes the right of the voters not to cast their votes in favour of particular candidates. There is no evidence to show that this or similar boards were put up by or with the consent of the candidates concerned. If the voter choose to put up such boards, we are not prepared to hold that there was corrupt practice or undue influence interfering with the free exercise of the right of voting, for which the successful candidates were responsible. In this connection, it is significant that none of the other respondents appeared in support of the election petition and the Congress candidates Messrs. Ambekar and Majrolkar, who polled 1,87,941 and 2,09,769 votes respectively, must have been the candidates, most affected by the putting up of boards of the type shown in Exhibit P-29.

These are the only objections which were raised before us by Mr. Dhabe on behalf of the petitioner challenging the correctness of the decision of the Election Tribunal and all of them fail. The result is that this appeal will have to be dismissed. As regards costs, it is true that we have accepted Mr. Dhabe's contention as regards one letter (Exhibit P-1) published in the Maratha of 14th February, 1957, a portion of which we have held amounts to corrupt practice under section 123(4) of the Representation of the People Act, 1951, by an agent of the candidate Mr. P. K. Atre, editor of the Maratha. But we have also held that that statement could not be said to have been made with the consent either of the successful candidate or of their election agents. On all other points Mr. Dhabe has failed. In the circumstance of this case, however, we do not think that the respondents will be entitled to different sets of costs. We direct the petitioner to pay one set of costs to the contending respondents, which we qualify at Rs. 250.

*Per Patel, J.:—*

I agree that the appeal must fail and must be dismissed. I may, however, add a few words on the important question regarding agency in election matters and construction of section 100 of the Representation of the People Act, 1951 as amended from time to time.

2. The argument was directed to corrupt practices as defined under section 123 of the Representation of the People Act 1951. The argument of Mr. Dhabe is that Mr. P. K. Atre, who is the proprietor and Editor of a daily known as

Maratha, had published several articles in his paper which came within the ambit of section 123, sub-section (4) of the Act. He argued that Mr. P. K. Atre, was the agent of the successful candidates and if so, if any corrupt practices were resorted to by this agent then under section 100 the election of the successful candidates could be avoided. My learned brother has very fully dealt with all those passages and has come to the conclusion that none of the passages can be brought within the ambit of section 123(4) except the letter which was published in the Maratha under the pen name of Sudhir Chavan. I entirely agree with the reasons given by my learned brother for so holding and I need not traverse those reasons over again.

3. So far as the question of agency is concerned, it must be mentioned that the word has not been defined anywhere in the Act, though it has been freely used in section 123, section 100 at one place and section 98 as well. For the purpose of section 123, explanation No. 1 is appended to that section which says, "In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate". This is an inclusive definition and not an exhaustive one and the question whether or not Mr. Atre was the agent of the returned candidates must therefore be determined with reference to the use of the word "agent" as understood in the law of elections all these days.

4. I may refer to a passage from the judgment of Mr. Justice Willes in the case Blackburn (1869) I O. 'M.&H. p. 202, which is as follows:—

> "Nothing can be clearer than this law; it has existed for a very considerable period; I believe certainly from as early as the time when James I came to the throne. Some 265 years ago, the general principle was laid down upon the first and only occasion upon which the jurisdiction of the House of Commons over parliamentary elections was seriously questioned, and upon which occasion it was confirmed (Goodwin's case 2, St. Tr. 1), and it is enacted and settled as the law by the corrupt practice Prevention Act, 1854, section 36 which, to my mind, does no more than lay down in very distinct terms that which has always been the understood law of Parliament, or rather the common law of the land, with respect to the election of members of Parliament: that is to say, that no matter how well the member have conducted himself in the election, no matter how clear his character may be from any imputation of corrupt practice in the matter, yet, if an authorised agent of his, a person who has been set in motion by him to conduct the election or convass voters on his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained. As it has been expressed from early time, no person can win and wear a prize upon whose behalf the contest has not been legitimately and fairly carried on or, as it was expressed in Goodwin's case (2. St. Tr. 91) "non coronabitur qui non legitime certaverit", which is only so much in Latin showing the antiquity of the principle I have already expressed in English; and whether it be the person who contends in respect of any unfair play of his own, whether it be the owner of a horse in respect of the foul riding of his jockey, whether it be the owner of a yacht in respect of the fault of his steersman, or the hoisting of an additional sail against the rules of the race by one of the seamen, or whether it be a candidate in a parliamentary contest in respect of his agent; in every one of these cases, whether it has been the principal who has been guilty of illegality, or whether the illegality has been committed by his agent only, even without his authority or against his will, provided it be done in his agency, and for the supposed benefit of his principal, such principal must bear the burnt, and cannot hold the benefit in respect of that in which the agent has compromised him, and would in a matter of this description have also betrayed the public, who have a right that a just election shall be had,".

Without multiplying reference to case law it may be stated that Tribunals in England have followed the principle of what is stated above without attempting to lay down a definite and precise definition of the word "Agency" in election matters/for the possible reason "that in some other case that particular definition might be evaded", although what came to substantially the same thing, might have taken place (Grove J. in the Wakefield Case Election Petitions Vol. 2. O'Malley and Hardcastle p. 102).

5. Our own Act has not given a precise definition of the word 'agent' and has left it to the Tribunal deciding an election case to determine in what relation a particular person canvassing for the votes for the candidate stands to him and from that to determine whether or not he was the agent of that candidate.

6. On this question then the evidence that falls to be considered is primarily that of Mr. Dange and Mr. P. K. Atre. It is not necessary to refer to any other evidence to come to a conclusion as to whether or not Mr. P. K. Atre was the agent of the Samiti candidates. My learned brother has considered the evidence in detail and it is not necessary for me again to traverse the whole ground. I agree with him that the evidence does point to one and one conclusion that Mr. Atre was the agent of the returned candidates for the purpose of election.

7. The Tribunal below has held that Mr. Atre was the Agent of the returned candidates for the purposes of meeting and not for what he was writing in his paper "Maratha". Mr. Atre in his evidence has stated that propaganda was carried on in this daily Maratha on behalf of the Samiti Candidates. He was carrying on propaganda in favour of Shri Dange and Manay also. He has also frankly referred to the fact that Shri Dange was the chairman of the Election Samiti and that he was and is a member of the Election Samiti. We may assume that when a special election committee is formed the purpose of that committee when they meet is not to talk weather. If an election committee is constituted it must consider the ways and means of carrying on the election propaganda and if it authorised its members to carry on propaganda that it is impossible to escape the conclusion that all the propaganda that was carried on by a particular member either in his own proprietary paper or in any other paper must be as agent of the candidate put up by the election committee. I agree with my learned brother therefore that Mr. P. K. Atre must be held to be the agent of the returned candidates for the purpose of the election propaganda whether it was carried on by addressing meetings or by articles published in his own paper or in any other paper.

8. The question then is whether the action of Mr. P. K. Atre in so far as the publication of the letter by even a correspondent which came within the ambit of section 123(4) could be brought within section 100 for declaring the result of the election void. If we turn to section 123 which defines corrupt practices, in every component part of the section we find the use of the word "by a candidate or his agent or by any other person" and those words appear not in sub-section (1) but in every other sub-section of that section. Coming however to section 100 it is a somewhat different matter. So far as relevant for the immediate purpose it is as follows:—

"100(1) Subject to the provisions of Sub-section (2) if the Tribunal is of opinion—

(b) that any corrupt practice has been committed

"by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;"

(c) that the result of the election, in so far as it concerns a returned candidate, has been materially affected.

(ii) by any corrupt practice committed in the contest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent".

"(2) If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Tribunal is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committeed contrary to the orders and without the consent, of the candidate or his election agent;

(b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election;

(c) That the candidate and his election agent took all reasonable means for preventing the Commission of corrupt practices at the election; and

(d) that in all other respects of the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the Tribunal may decide that the election of the returned candidate is not void".

9 Clause (1) (b) is intended to be directed to any corrupt practice committed by the candidates or election agent who has been defined in the Act whatever be the nature of the corrupt practice. However if the corrupt practice is by some one other than those two then consent must be proved. Sub-clause (2) cannot be a proviso to this clause for the obvious reason that though an agent may fall within the words "any person other than a candidate or his election agent" as found in sub-clause (1) to come within the proviso it must be established that the corrupt practice was omitted "without consent", a contradiction in terms. Moreover, on fundamental principles acts of agents cannot have been intended to be treated so leniently, for it would be in a rare case that consent of the candidate could be established. It would appear that sub-clause (2) is meant to be a proviso to some provision which would enable the tribunal to declare the election of a returned candidate void on the ground of a corrupt practice by an agent. But such a provision is absent from this section If Mr. Atre's action falls within sub-section (1) even though he is an agent then for the reason stated by my learned brother and with which I agree, consent of the returned candidates or their election agent not having been established the election cannot be held to be void.

10 Is it then possible to bring this particular action of Mr. Atre within any other provision of the section. The only one under which it could possibly be brought is sub-section (1) (d) of section 100. This provision in relation to the words "or a person acting with the consent of such candidate or election agent" is capable of being read in two ways, (1) by any corrupt practice committed in the interest of the returned candidate by a person other than a person acting with the consent of such candidate or election agent and (2) by any corrupt practice committed by a person acting with the consent of such candidate or election agent. It seems this sub-clause (d) is directed to something or the other done or omitted to be done by some one other than a candidate or his agent. It is therefore that "result of the election is materially affected" required before the election could be set aside. This is obvious for in election it is common experience of some person "volunteers" who without even the knowledge of the candidate or his agent take so much interest in the election of a particular party or person and act in furthering his election. The provision is meant for canvassers like them. As an illustration in the very case it has appeared that in a chawal some persons put up a board and at other places some person refused to allow the canvassers to even enter the chawl. I would therefore read the provision in the first meaning suggested by me. If it is read in this sense then Mr. Atre's conduct will not be covered by it since he is not some one "other than a person acting with the consent of such candidate or election agent".

11. Is it possible to assign the second meaning to the section? For that purpose reference must be made to the provisions of sub-section (2) of section 100 which I have stated before. It must be remembered that this part must be read as a qualification to sub-section (1) which undoubtedly it is, as it gives jurisdiction to the Tribunal to decide that the election of the returned candidate is not void if it is satisfied about certain matters in relation to the corrupt practices of an agent of a candidate. The result of applying it to sub-clause (d) would be that if the corrupt practice is committed by some one falling within the words "person acting with the consent of the candidate" but is not "an agent", then the election must be set aside if it materially affected the result of the election. But if the corrupt practice is by an agent a person who is more than a person acting with the consent of the candidate or his election agent.., then the further facts if established would enable the election Tribunal to decide that the election of the returned candidate is not void, a result obviously not intended. The provisions of this sub-section are wholly unsuited for being applied as a proviso to this method of reading that sub-clause It is therefore impossible to read the section in its second meaning. Further this conclusion is strengthened by the very wording of that sub-section (2) which refers specifically to a corrupt practice by an agent for which apparently there is no provision in the earlier sub-section.

12. The discussion above would show that it is a case of omission, an unfortunate result which should not be lightly created. It is no doubt possible to get over this difficulty and to bring out the real intention of the Act by reading the word "his agent" instead of the words "his election agent" in clause (ii) of section 100(1) and that is no doubt open to a Court construing a statute (see Maxwell, 10th Edn. Page 229).

> "This may be done by departing from the rules of grammer, by giving an unusual meaning to particular words, by altering their collocation or by rejecting them altogether, under the influence, no doubt of an irresistible conviction that the legislature could not possibly have intended what its words signify and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used".

I would have been tempted to do it in the case under discussion but for the fact that in the Bill as presented in the House the words were "his agent" while in the Act as passed the words are "his election agent". It would therefore appear that what was done was done with some purpose which has however left a gap in the Legislation. It is not for the Court to remedy that gap. There is therefore apparently no provision under section 100 under which the action of Mr. P. K. Atre can be brought as an agent of the returned candidate. Assuming that the second meaning can be assigned to the provision that is not proved that the result of the election has materially affected the election therefore cannot be declared void.

13. As to the other grounds urged by Mr. Dhabe, my learned brother has dealt with them in great detail and I agree with his conclusions and have nothing further to add. I therefore agree with the final order that is proposed by my learned brother.

By the order of the Court,

*The 4th December*, 1958.

N. M. SHANBHAG,
Deputy Registrar.

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[No. 82/437/57/78.]

By Order,

DIN DAYAL, Under Secy.

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*New Delhi, the 26th February* 1959

**S.O. 492.**—In exercise of the powers conferred by proviso (a) to sub-rule (2) of rule 5 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 the Election Commission hereby directs that the following further amendment shall be made in its notification No. 56/1/58(2) dated the 12th May, 1958 as amended by its Notifications Nos. 56/1/58 dated the 14th July, 1958 and 56/1/58, dated the 2nd February, 1959:—

*Amendment*

In paragraph III of the said notification the words "Andhra Pradesh and" shall be omitted.

[No. 56/1/58.]

By Order,

S. C. ROY, Secy.

## MINISTRY OF LAW

### (Department of Legal Affairs)

*New Delhi-2, February 26, 1959*

**S.O. 493.**—In exercise of the powers conferred by clause (1) of article 299 of the Constitution, the President hereby directs that all contracts made in the exercise of the executive power of the Union for the grant of interest-free advances to the salt manufacturers in Andhra Pradesh for the purpose of repairs to or renovation of the factories damaged by the heavy rains of October, 1958, shall be executed on his behalf, by the Deputy Salt Commissioner, Madras.

[No. F.17(2)/59-J.]

P. K BOSE, Dy. Secy.

## MINISTRY OF HOME AFFAIRS

*New Delhi, the 27th February 1959*

**S.O. 494.**—In pursuance of rule 11 of the Indian Administrative Service (Pay) Rules, 1954, the Central Government hereby makes the following amendments in Schedule III appended to the said Rules, namely:—

In the said Schedule, under the heading "C-Posts carrying pay above the time-scale or special pay in addition to pay in the time-scale under the Central Government when held by members of the Service", against "Home Affairs" in the first column:—

(1) for the entries "Chief Secretary to Government, Delhi State" in the second column relating to 'Particulars of posts', "senior scale" in the third column relating to 'Pay/Scale of pay' and "300" in the fourth column relating to 'Special pay', the following entries shall respectively be substituted, namely:—

"Chief Secretary, Delhi Administration.....1800-100-2000....."

(2) after the entires relating to Chief Secretary, Delhi Administration, aforesaid, the following entries shall respectively be inserted in the second, third and fourth columns, namely:—

"Development Commissioner, Delhi Administration....Senior scale....300".

Amendment (1) hereby made shall be deemed to have come into force on the 23rd September, 1958 and amendment (2) on the 1st December, 1958.

[No. 1/288/58-AIS(II).]

S. NARAYANSWAMY, Dy. Secy.

*New Delhi-11, the 26th February 1959*

**S.O. 495.**—In exercise of the powers conferred by section 17 of the Indian Arms Act, 1878 (11 of 1878), the Central Government hereby makes the following further amendment in the Indian Arms Rules, 1951, namely:—

In Schedule VIII to the said Rules, in Form XI, after condition 9, the following condition shall be inserted, namely:—

"9-A. He shall not sell to anyone any arms manufactured by him unless such arms are duly proof-tested, at a Government establishment or an establihment approved in this behalf by the Central Government."

[No. F. 20/1/59-P(IV).]

*New Delhi, the 2nd March 1959*

**S.O. 496.**—In exercise of the powers conferred by sub-rule (3) of rule 44 of the Indian Arms Rules, 1951, the Central Government hereby remits the fee payable for the licence to be taken out in Form XVI by the Pujari of the Sikh Gurdwara at Nanded in Bombay State in respect of the following fire-arms held by the Gurdwara for worship purposes:—

| | Description of the fire-arms | Number |
|---|---|---|
| 1. | SBML Pistol | 34 |
| 2. | DBML Pistol | 9 |
| 3. | ML Revolvers | 4 |
| | Total. | 47 |

[No. F.22/34/57-Police (IV).]

C. P. S. MENON,
Regulations Officer.

## MINISTRY OF FINANCE

### (Department of Expenditure)

*New Delhi, the 24th February 1959*

**S.O. 497.**—In exercise of the powers conferred by the proviso to article 309, and clause (5) of article 148, of the Constitution, the President, after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, hereby makes the following further amendments in the Contributory Provident Fund Rules (India), namely:—

In rule 12 of the said Rules, to sub-clause (iii) of clause (a), the following proviso and note shall be added, namely:

"Provided that the condition of actual dependence shall not apply in the case of son or daughter of the subscriber.

NOTE.—Advances under sub-clause (iii) are also permissible for meeting expenditure in connection with marriage and other ceremonies of the subscriber himself/herself."

[No. F. 28(31)-EV/58.]

**S.O. 498.**—In exercise of the powers conferred by the proviso to article 309, and clause (5) of article 148, of the Constitution, the President, after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, hereby makes the following further amendments in the General Provident Fund (Central Services) Rules, namely:—

In rule 15 of the said Rules, to sub-clause (iii) of clause (a) of sub-rule (1), the following proviso and note shall be added, namely:—

"Provided that the condition of actual dependence shall not apply in the case of son or daughter of the subscriber.

NOTE.—Advances under sub-clause (iii) are also permissible for meeting expenditure in connection with marriage and other ceremonies of the subscriber himself/herself."

[No. F. 28(31)-EV/58.]

D. D. BHATIA, Dy. Secy

**(Department of Economic Affairs)**

*New Delhi, the 27th February 1959*

**S.O. 499.**—In exercise of the powers conferred by clause (b) of sub-section (1) of section 4 read with sub-section (1) of section 6 of the Rehabilitation Finance Administration Act, 1948 (12 of 1948), and in partial modification of the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs) No. F. 7(57)-Corp./58, dated the 1st October, 1958, the Central Government hereby appoints Shri A. Baksi, Joint Secretary to the Government of India in the Ministry of Finance (Department of Economic Affairs), as a member of the Rehabilitation Finance Administration, *vice* Shri M. S. Bhatnagar.

[No. F. 7(83)-Corp./58.]

M. K. VENKATACHALAM, Dy. Secy.

**(Department of Economic Affairs)**

*New Delhi, the 26th February 1959*

**S.O.500.**—Statement of the Affairs of the Reserve Bank of India, as on the 20th February 1959.

BANKING DEPARTMENT

| Liabilities | Rs. | Assets | Rs. |
|---|---|---|---|
| Capital paid up | 5,00,00,000 | Notes | 29,01,19,000 |
| Reserve Fund | 80,00,00,000 | Rupee Coin | 2,19,000 |
| National Agricultural Credit (Long-term Operations) Fund | 25,00,00,000 | Subsidiary Coin | 3,74,000 |
| National Agricultural Credit (Stabilisation) Fund | 3,00,00,000 | Bills Purchased and Discounted :— | |
| | | (*a*) Internal | .. |
| Deposits :— | | (*b*) External | .. |
| (*a*) Government | | (*c*) Government Treasury Bills | 5,93,55,000 |
| (1) Central Government | 61,44,49,000 | Balances held abroad* | 33,46,52,000 |
| (2) Other Governments | 19,31,30,000 | **Loans and Advances to Governments | 21,90,17,000 |
| (*b*) Banks | 71,42,15,000 | Other Loans and Advances | 84,37,68,000 |
| (*c*) Others | 114,77,38,000 | Investments | 260,04,37,000 |
| Bills Payable | 19,86,46,000 | Other Assets | 11,65,02,000 |
| Other Liabilities | 37,62,65,000 | | |
| TOTAL | 437,44,43,000 | TOTAL | 437,44,43,000 |

*Includes Cash & Short term Securities.

**Includes Temporary Overdrafts to State Governments.

The item 'Other Loans and Advances' includes Rs. 5,61,81,000 advanced to scheduled banks against usance bills under Section 17(4) (*c*) of the Reserve Bank of India Act.

Dated the 25th day of February, 1959.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 20th day of February, 1959

ISSUE DEPARTMENT

| Liabilities | Rs. | Rs. | Assets | Rs. | Rs. |
|---|---|---|---|---|---|
| Notes held in the Banking Department | 20,01,19,000 | | A. Gold Coin and Bullion :— | | |
| | | | (*a*) Held in India | 117,76,03,000 | |
| Notes in circulation | 1659,49,01,000 | | (*b*) Held outside India | .. | |
| Total Notes issued | | 1679,50,20,000 | Foreign Securities | 178,00,89,000 | |
| | | | TOTAL OF A. | | 295,76,92,000 |
| | | | B. Rupee Coin | | 132,28,39,000 |
| | | | Government of India Rupee Securities | | 1251,44,89,000 |
| | | | Internal Bills of Exchange and other commercial paper | | .. |
| TOTAL—LIABILITIES | | 1679,50,20,000 | TOTAL—ASSETS | | 1679,50,20,000 |

Dated the 25th day of February, 1959.

[No. F. 3(2)-BC/59.]

K. G. AMBEGAOKAR, Dy. Governor.

A. BAKSI, Jt. Secy.

**(Department of Revenue)**

INCOME TAX

*New Delhi, the 20th February* 1959

**S.O. 501.**—In exercise of the powers conferred by sub-section (1) of section 46-A of the Indian Income-tax Act, 1922 (11 of 1922), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Revenue Division), No. S.R.O. 961, dated the 25th May, 1953, namely:—

In clause (2) of the said notification, after the words 'Commonwealth Countries' the words 'or British Colonies and Protectorates' shall be inserted.

[No. 24(F.46(20)-I.T./58)].

P. N. DAS GUPTA, Dy. Secy.

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**(Department of Revenue)**

ORDER

STAMPS

*New Delhi, the 27th February* 1959

**S.O. 502.**—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the lease deed to be executed by the Embassy of the United Arab Republic in India in respect of Plot No. 1 (measuring about four acres) in Block No. 50-M, Chanakyapuri, New Delhi, is chargeable under the said Act.

[No. 6. F. No. 1/13/59-Stamps/Cus.VII.]

D. N. LAL, Under Secy.

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## MINISTRY OF TRANSPORT AND COMMUNICATIONS

**(Department of Transport)**

**(Transport Wing)**

PORTS

*New Delhi, the 28th February* 1959

**S.O. 503.**—In pursuance of sub-section (3) of section 6 of the Bombay Port Trust, Act, 1879 (Bombay Act 15 of 1879), it is hereby notified that in accordance with the provisions of sub-section (1) of section 13 of the said Act, Shri Arvind N. Mafatlal has been elected by the Millowners' Association, Bombay, as the Association's representative on the Bombay Port Trust Board from the 9th February 1959, *vice* Shri Vithal N. Chandavarkar deceased.

[No. 8-C-PG(14)/59.]

Miss I. INDIRA, Under Secy.

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## CENTRAL BOARD OF REVENUE

ESTATE DUTY

*New Delhi, the 2nd March* 1959

**S.O. 504.**—The following draft of further amendments to the Estate Duty Rules, 1953 (SRO 556 of 1954), which the Central Board of Revenue proposes to make in exercise of the powers conferred by sub-section (1) of section 85 of the Estate Duty Act, 1953 (34 of 1953), is published as required by sub-section (1) of the said section 85, for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 27th March, 1959.

2. Any objection or suggestion which may be received from any person with respect to the said draft before the date so specified will be considered by the said Board.

*Draft Amendment*

In the said rules, for rules 3, 4, 5 and 6, the following rules shall be substituted, namely:—

"3. Where an Assistant Controller finds that the principal value of the estate in any case pending before him exceeds or is likely to exceed the pecuniary limits of his jurisdiction, he shall transfer the case to the Deputy Controller having jurisdiction over the estate.

4. (a) The Deputy Controller to whom the case of an estate has been transferred under rule 3, may continue the proceeding so transferred from the stage at which it stood immediately before the transfer or recommence the proceeding:

Provided that before recommencing any proceeding, the accountable person shall be given a reasonable opportunity of being heard.

(b) The jurisdiction of the Deputy Controller to whom the case of an estate has been transferred under rule 3 shall not be called in question merely on the ground that the principal value of the estate as determined by the Deputy Controller is less than the value specified for the purpose of his jurisdiction.

5. Notwithstanding that an Assistant Controller or a Deputy Controller is not exercising the functions of the Income-tax Officer or the Inspecting Assistant Commissioner, as the case may be, in respect of the assessment under the Income-tax Act of a deceased person, he shall exercise the functions of the Controller in respect of the estate of the deceased if the case relating to the estate is specifically assigned to him under the second proviso to sub-section (2) of section 4 of the Act.

6. (1) Notwithstanding anything contained in rule 3 or in any other rule, the Board may at any stage of the proceeding relating to the case of any estate transfer it from one assessing authority to another and thereupon the provisions of rule 4 shall, so far as may be, apply.

(2) Whenever, a Deputy Controller or an Assistant Controller ceases to exercise jurisdiction in respect of any proceeding under the Act and is succeeded by another who has or exercises such jurisdiction, the Deputy Controller or Assistant Controller so succeeding may continue the proceeding from the stage at which it was left by his predecessor;

Provided that the accountable person may, when the succeeding Controller commences to exercise jurisdiction, demand that the previous proceeding or any part thereof taken before his predecessor be recommended or that before any order imposing the duty is passed, he be re-heard."

*Explanatory Note*

(This note is not a part of the amendments but is intended to explain the purpose thereof.)

At present an Assistant Controller who is in Class II Service can deal with estates whose value does not exceed rupees five lakhs and an Assistant Controller who is in Class I Service can deal with estates whose value does not exceed rupees ten lakhs. Estates of the value of over ten lakhs are dealt with by Deputy Controllers. With a view to avoid frequent transfers of cases from one officer to another, it has been decided to remove the distinction in the matter of jurisdiction between Assistant Controllers in Class II Service and Assistant Controllers in Class I Service and give all Assistant Controllers jurisdiction over estates whose value does not exceed rupees ten lakhs.

[No. 6/F. No. 12/1/59-E.D.]

D. SUBRAMANIAN, Secy.

## MINISTRY OF COMMERCE AND INDUSTRY

MERCHANDISE MARKS

*New Delhi, the 26th February 1959*

**S.O. 505.**—The following draft of a notification which the Central Government, being convinced that it is necessary in the public interest so to do, proposes to issue, in exercise of the powers conferred by sub-section (1) and sub-section (3) of section 117 of the Trade and Merchandise Marks Act, 1958 (43 of 1958), and in supersession of the notification of the Government of India in the Ministry of Commerce and Industry, No. S.R.O. 440 dated the 31st March, 1951 and of the notification of the Government of India in the late Ministry of Commerce and Consumer Industries, No. S.R.O. 2290 dated the 6th October, 1956 is published as required by sub-section (4) of the said section for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 9th April, 1959. Any objection which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government.

*Draft Notification*

1. (a) Subject to the provisions of sub-section (5) of section 117, the classes of goods specified in column 2 of Part I and Part II of the Schedule hereto annexed shall on and after the 1st August, 1959, on importation, (where the goods are imported) and at the time of sale whether by wholesale or retail or both (where the goods are made or produced within the limits of India), have applied to them in the English language and in large and conspicuous letters an indication of the country or place in which they were made or produced or of the name and address of the manufacturer or the person for whom the goods were manufactured, in the manner specified in the corresponding entry in column 3 of the said Schedule.

(b) Where such goods are made or produced in one country and contained in packages made or produced in another, the indication shall specify such countries.

(c) Where such goods which are imported are partly or wholly made or produced in one country and partly made or produced or finished or processed or embellished or completed in another country or other countries, or where the imported goods are made of indistinguishable parts or constituents made in two or more different countries, the indication as to origin shall be "Manufacture of different countries outside India" or "Produce of different countries outside India".

(d) Where such goods are produced in a foreign country but "packed" or otherwise processed in India, both the country of origin and the words "packed in India" or "processed in India", as the case may be, shall be indicated.

(e) Where such goods are assembled in India with foreign and indigenous parts, the indication of the country of origin to be applied to the goods shall be "assembled in India".

(f) Where such goods are made in India with foreign and indigenous materials, the indication shall contain the words "Made in India with foreign and indigenous materials".

(g) In the case of such goods which are imported into India, if the name of the place in which they were made or produced is identical with, or deceptively similar to, the name of a place in India or if the name is the name of a place in more than one country, such name shall be accompanied in equally large and conspicuous letters and in the English language by the name of the country in which the place is situate.

2. Where due to the smallness of the size of the goods or otherwise it is impracticable to mark on the goods themselves the country or place of origin or the name and address of the manufacturer or the person for whom the goods

were manufactured, or where it is not possible to do so without adversely affecting the quality of the goods, or without undue expenditure, the indication may be applied on the package of such goods.

3. In this notification, "applied" includes attached, enclosed, annexed, inserted, secured, fastened, stitched, sewn or woven.

## SCHEDULE

### PART I

*Goods made or produced beyond the limits of India and imported into India for trade purposes other than for re-export.*

| Item No. | Class of goods | Manner in which the indication shall be applied |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Apparatuses and appliances electric and all kinds assembled. | On the goods themselves. |
| 2. | Chemicals, drugs medicines and pharmaceutical products of all kinds. | On the packages. |
| 3. | Cigarettes. | Do. |
| 4. | Electrical wiring accessories . . . | On the packages or otherwise. |
| 5. | Electric cells and batteries of all kinds including primary batteries for dry cells, flash lamps, torch type, motor car batteries, and also plates for motor vehicle batteries. | On the goods themselves. |
| 6. | Fountain pen barrels . . . | On the goods themselves. |
| 7. | Fents . . . . . | On the bundles or packages. |
| 8. | Glass bulbs and globes including electric incandescent bulbs. | On the goods themselves. |
| 9. | Iron ingots . . . . . | On the goods themselves. |
| 10. | Lanterns and lamps of all kinds including electric torches and flashlights and automobile lamps. | Do. |
| 11. | Machinery of all kinds assembled . . | Do. |
| 12. | Manufactures of wood . . . . | Do. |
| 13. | Parts, spare parts and accessories of apparatuses and appliances, electric and all kinds. | On the packages or otherwise. |
| 14. | Parts, spare parts and accessories of machinery of all kinds. | On the packages or otherwise. |
| 15. | Piecegoods of cotton, silk, artificial silk, staple fibre yarn and wool including mixture piecegoods, *i.e.*, piecegoods made out of different kinds of yarns, or piecegoods made out of yarns spun out of mixture of different kinds of textile fibre. | On the goods themselves. |
| 16. | Spirits, Wines and liquors . . . | On the capsules and where there are no capsules on the corks as well as on the labels of the bottles or packages. |
| 17. | Stationery goods, all kinds . . . | On the packages or otherwise. |
| 18. | Tiles of all kinds . . . . | On the goods themselves. |
| 19. | Toilet preparations of all kinds, including soaps. | On the packages. |
| 20. | Wood and timber in logs. . . . | On the goods themselves. |

| (1) | (2) | (3) |
|---|---|---|
| 21. | Wood and timber in pieces, planks or scantlings. | On the bundles or otherwise. |
| 22. | Yarns of cotton, silk, artificial silk, staple fibres and wool including yarn spun out of mixture with one or more kinds of textile fibres, as well as yarns consisting of strands of different kinds of yarn combined by the process of doubling or twisting. | On the bundles. |
| 23. | All other imported goods which bear or purport to bear any name, word or other mark or trade description or which contains any indication suggesting or implying that the goods are made or produced in India, subject to Notes I and II below. | On the goods themselves or on the packages (*See* Note II below) |

NOTE I.—An indication of the country or place of origin is not necessary in the case of packages made in a foreign country and bearing the name of an Indian manufacturer, dealer or trader who had ordered the packages for packing his own goods for sale and not for the purpose of trading in such packages.

NOTE II.—The indication of a country or place of origin shall be shown in letters as large and conspicuous as any letter in the name, or word or trade description applied to the goods and shall accompany every application of the name, word or trade description. The indication of the country or place of origin shall be on the same package or goods, as the case may be, to which the name or word or trade description is applied and shall be immediately before or after such name, word or trade description. The indication shall not be on a separate label nor otherwise detachable from the package or the goods, as the case may be, to which the name, word or trade description has been applied and shall be applied no less indelible than the latter. The indication shall be repeated for all the applications of the name, word or trade description except when the latter are reproduced in such close proximity that one prominent indication will suffice to cover all.

## PART II

*Goods made or Produced within the limits of India*

| Item No. | Class of goods. | Manner in which the indication shall be applied. |
|---|---|---|
| (1) | (2) | (3) |
| 1. | Abrasives coated . . . . . | On the goods themselves. |
| 2. | Batteries of all kinds, primary and secondary, such as dry cells for flash lights, radios, etc. and stoarge batteries of the motor vehicle, train lighting and stationery types, and also plates for motor vehicle batteries. | On the goods themselves. |
| 3. | Belting . . . . . | Do. |
| 4. | Blowers (Industrial) . . . . | Do. |
| 5. | Boilers . . . . . | Do. |
| 6. | Bolts, nuts and rivets . . . | On the packages or otherwise. |
| 7. | B.R.C. and other fabrics . . . | On the bundles or packages. |
| 8. | Chemicals, drugs, medicines and pharmaceutical products of all kinds. | On the packages. |
| 9. | Cigarettes . . . . . | On the packages. |
| 10. | Cotton piecegoods excepting handloom cloth. | On the goods themselves. |
| 11. | Cutlery articles, metallic . . . . | Do. |

| (1) | (2) | (3) |
|---|---|---|
| 12. | Cycles complete | On the frames, forks and mudguards. |
| 13. | Cycles, major component parts of, such as, Front Forks, Mudguards, handle bars, brakes, chain wheels and cranks Pedals, Freewheels, Hubs, Rims, Lamp brakets, chain adjusters, Reflectors, Hub Axle, Centralaxle. | On the goods themselves. |
| 14. | Cycles, small component parts of, out covered by item 13. | On the packages. |
| 15. | Duplicators | On the goods themselves. |
| 16. | Electric brass lamps holder | On the lamp holders and cartons. |
| 17. | Electrical equipment | On the goods themselves. |
| 18. | Fountain Pens | On the goods themselves. |
| 19. | Gate hooks and eyes. | On the packages. |
| 20. | Gramophone needles | On the packages. |
| 21. | Grinding Medla | On the packages . |
| 22. | Grinding stones. | On the label pasted. |
| 23. | Grinding wheels | On the goods themselves. |
| 24. | Hurricane lanterns, | On the goods themselves. |
| 25. | Inks of all kinds including fountain pen ink. | On the bottles and paper cartons. |
| 26. | Oil pressure lamp mantles | On the packages. |
| 27. | Oil pressure Lamps | On the goods themselves. |
| 28. | Parts, spare parts and accessories of all internal combustion engine. | On the packages or otherwise. |
| 29. | Parts, spare parts and accessories of machinery of all kinds. | On the packages or otherwise. |
| 30. | Parts, spare parts and accessories of motor vehicles. | On the packages or otherwise. |
| 31. | Pressure stoves | On the goods themselves. |
| 32. | Prophylactics (Rubbers) | On the packages. |
| 33. | Pumps | On the goods themselves. |
| 34. | Razor blades | On the goods themselves. |
| 35. | Rubber manufactures | Do. |
| 36. | Safety pins | On the packages. |
| 37. | Sealfast seal | On the goods themselves. |
| 38. | Spirits, Wines and Liquors | On the Capsules and where there are no Capsules on the corks as well as on the labels of the bottles or packages. |
| 39. | Split cotter pin and taper cotter pin | On the packages. |
| 40. | Sports goods of all kinds | On the goods themselves. |
| 41. | Steel files. | On the goods themselves. |
| 42. | Steel drums and barrels | Do. |
| 43. | Tennis balls | On the packages. |
| 44. | Toilet preparations of all kinds including soaps. | On the packages. |
| 45. | Tools (garage equipment) | On the goods themselves. |
| 46. | Tooth brushes | On the goods themselves. |
| 46. | Trailors | Do. |
| 48. | Welding Electrodes | On the packages or otherwise. |
| 49. | Woodscrews and machine screws | Do. |

| (1) | (2) | (3) |
|---|---|---|
| 50. | Yarn of cotton, silk, artificial silk, staple fibre and wool, including yarn spun out of mixture with one or more kinds of textile fibres, as well as yarn consisting of strands of different kinds of yarn combined by the process of doubling or twisting. | On bundles. |
| 51. | Zip Fastners . . . . . | On the goods themselves. |

[No. 7(1)-TMP/59.]

*New Delhi, the 27th February 1959*

**S.O. 506.**—In exercise of the powers conferred by sub-section (1) of section 57 and sub-section (1) of section 77 of the Indian Patents and Designs Act, 1911 (2 of 1911), the Central Government hereby makes the following further amendments in the Indian Patents and Designs Rules, 1933, the same having been previously published as required by sub-section (2) of the said section 77, namely:—

In the said rules,—

(1) in sub-rule (1) of rule 7,

(i) after the words and figures "13 inches by 8 inches", the words and figures "or 33·00 centimetres by 20·50 centimetres" shall be inserted;

(ii) after the words "one inch and a half", the words "or four centimetres" shall be inserted;

(2) for sub-rule (1) of rule 16, the following sub-rule shall be substituted, namely:—

"Size of drawings and arrangement of figures.—(1) Drawings shall be on sheets which measure 13 inches or 33·00 centimetres from top to bottom and are either from 8 inches to 8¼ inches or 20·50 centimetres to 21 centimetres or from 16 inches to 16½ inches or 41·00 centimetres to 42·00 centimetres wide, the narrower sheets being preferable. A clear margin shall be left half an inch or one centimetre and a half from the edges of the sheets.";

(3) in clause (h) of rule 17, after the words "one-eighth of an inch", the words and figures "or 0·3 centimetre" shall be inserted;

(4) in rule 38,—

(i) in sub-rule (3), after the words and figures "13 by 8 inches", the words and figures "or 33·00 centimetres by 20·50 centimetres" shall be inserted;

(ii) in sub-rule (7), after the figures and words "5 by 4 inches", the words and figures "or 13·00 centimetres by 10·00 centimetres" shall be inserted;

(5) in the First Schedule—

(i) in column 4, for the words and letters "Rs. A. P.", the word and letters "Rs. nP." shall be substituted.

(ii) in column 4 against entry 26, for the word and figure "As. 8", the words and figures "50 nP." shall be substituted;

(iii) in column 2 below entry 34, for the figure and word "1 anna", the figure and words "6 nP." shall be substituted;

(6) in the Second Schedule—

(i) in the marginal note (c) of Form 3, after the figures and word "1½ inches", the words and figure "or 4 centimetres" shall be inserted;

(ii) in the marginal note (c) of Form 3A, after the figures and word "1½ inches", the words and figure "or 4 centimetres" shall be inserted;

(iii) in Note (2) under Form 9, after the figures and word "1½ inches", the words and figure "or 4 centimetres" shall be inserted;

(iv) in the Note under Form 29, for the words "anna one", the figure and words "6 nP." shall be substituted.

[No. F. 14(2)-TMP/58.]

K. RAJARAMAN, Under Secy.

*CORRIGENDUM*

*New Delhi, the 28th February 1959*

**S.O. 507.**—In the Ministry of Commerce and Industry's Order SRO 205/IDRA/6/13, dated the 4th March, 1958 published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 8th March, 1958:—

*For* "12. Shri C. J. Dadachanji, M/s. National Carbon Co. (India) Ltd., Kasturi Building, Jamshedji Tata Road, Bombay-1"

*Read* "12. Shri C. J. Dadachanji, National Carbon Co. (India) Ltd., 'Ilaco House', 1 & 3 Brabourne Road, Calcutta-1".

[No. 4(10)IA(II)(G)/59.]
A. K. CHAKRAVARTI, Under Secy.

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**(Indian Standards Institution)**

*New Delhi, the 27th February 1959*

**S. O. 508.**— In pursuance of sub-regulation(1)of regulation 8 of the Indian S andards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that one licence, particulars of which are given in the Schedule hereto annexed has been renewed.

THE SCHEDULE

| Sl. No. | Licence No, and Date | Period of Validity From | To | Name and Address of the Licensee | Article covered by the licence | Relevant Indian Standard |
|---|---|---|---|---|---|---|
| 1 | CM-L-69 7-2-1958 | 1-3-1959 | 29-2-1960 | M/s. Jayshree Plywoods, (formerly Union Plywood Ltd.) 20 Canal East Road, Calcutta. | Tea-Chest Plywood Panels | IS: 10-1953 Specification for Plywood Tea-Chests *(Revised)* |

[No. MDC/12(174)-L.]
LAL C. VERMAN, Director.

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*CORRIGENDUM*

*Bombay, the 19th February 1959*

**S.O. 509.**—In the Ministry of Commerce & Industry's Notification No S.O. 2076, dated 27th August 1958, published at pages 1874 to 1881 of the Gazette of India Extraordinary, Part II, Section 3(ii), dated the 11th October, 1958.

In Schedule 'A' appended to the said notification:—

Under the column 13 against Vijay, *for* "60" *read* "50".

D. S. JOSHI, Textile Commissioner.

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[No. F.24(44)TEX(A)/57.]
V. V. NENE, Under Secy.

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*ERRATUM*

In the Ministry of Commerce and Industry Notification No. 21(11) Plant(B)/57, dated 3rd October, 1958 (Conduct Rules for Rubber Board Employees) published in the Gazette of India Part II—Section 3(ii), dated 11th October, 1958 as S.O. 2083, the following correction is to be made:—

Page 1884, Rule 2(d) (ii), 2nd line—
*for* "Board's employee or to such Board's wife....."
*read* "Board's employee or to such Board's employee's wife....."

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## MINISTRY OF WORKS, HOUSING & SUPPLY

*New Delhi, the 26th February 1959*

**S.O. 510.**—In pursuance of clause (b) of section (2) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952), the Central Government hereby authorises the Special Land Acquisition Officer, Ahmednagar, in the State of Bombay to perform the functions of the competent authority under the said Act for the areas falling within his jurisdiction.

[No. EE. 12(1)/59].

**S.O. 511.**—In exercise of the powers conferred by sub-section (1) of section 17 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952), the Central Government hereby directs that the powers exercisable by it under section 6, section 7, section 8 [except clause (b) of sub-section (1)] and section 13 of the said Act, shall be exercisable also by the Special Land Acquisition Officer, Ahmendnagar, in the state of Bombay, in respect of any property situated within his jurisdiction;

Provided that the power under the said section 8 in so far as it relates to the fixing of the amount of compensation by agreement shall not be exercised except with the previous concurrence of the Central Government.

[No. EE. 12(1')/59.]

B. D. KUMAR, Dy. Secy.

## THE MYSORE CENTRAL EXCISE COLLECTORATE, BANGALORE

*Bangalore, the 29th January 1959*

**S.O. 512.**—Corrigendum to Notification No. 11/58 (C. No. VI/Y/21/57/58-B.1), dated the 19th June, 1958, of the Collector of C. Ex., Bangalore [published under S. O. No. 2453 on pages 2576 and 2577 of part II, Section 3(ii) of the Gazette of India dated 29th November, 1958].

Note (ii) and (iii) to annexure 'A' Records of Dips taken shall be substituted by

(ii) Dips should be taken each time at the beginning of work for the shift day or close of work for the shift day.

(iii) No dips need be taken when oil is cleared by weighment but dips must be taken when it is cleared in bulk without weighment.

(iv) Dips must also be taken each time oil is received into the storage tank.

[No. VI/Y/21/57/58-B.1.]

D. N. KOHLI, Collector.

## DELHI DEVELOPMENT AUTHORITY

*New Delhi the 26th February, 1959*

**S.O. 513.**—In exercise of the powers conferred by sub-section (1) of section 57 of the Delhi Development Act, 1957 (61 of 1957), the Delhi Development Authority, with the previous approval of the Central Government, hereby makes the following regulations, namely :—

### CHAPTER I

GENERAL

1. **Short Title.**—These Regulations may be called the Delhi Development Authority Regulations.

2. **Definitions.**—In these regulations, unless the context otherwise requires :—

(*a*) 'Act' means the Delhi Development Act, 1957 (61 of 1957);

(*b*) 'Authority' means the Delhi Development Authority constituted under section 3 of the Act.

### CHAPTER II

3. **Conduct of business.**—The Authority shall meet and shall from time to time make such arrangements not inconsistent with the Act with respect to the place, day, hour, notice, management and adjournment of its meetings and generally with respect to the transaction of business as it may think fit, subject to the following provisions, namely :—

(*a*) an ordinary meeting shall be held at least once in every month:

Provided that between any two successive meetings there shall ordinarily not be an interval of more than 30 days;

(*b*) the Chairman or the Vice-Chairman, may, whenever he thinks fit, and shall upon the written request of not less than two members, call an extraordinary meeting ;

(*c*) a notice for an ordinary meeting and for an extraordinary meeting shall not be less than three days and 24 hours respectively ;

(*d*) no business shall be transacted at any meeting unless at least four members are present from the beginning to the end of the meeting ;

(*e*) every meeting shall, if the Chairman is present, be presided over by him and if he is absent, the Vice-Chairman. If neither is present, it shall be presided over by such one of the members present as may be chosen by the meeting;

(*f*) all questions shall be decided by a majority of votes of the members present and voting, the person presiding having a second or casting vote in all cases of equality of votes ;

(*g*) if a poll be demanded, the names of the members voting and the nature of their votes shall be recorded by the person presiding ;

(*h*) minutes shall be kept of the names of the members present and of the proceedings at each meeting in a book to be provided for this purpose, which shall be signed at the ensuing meeting by the person presiding at such meeting, and shall be open to inspection by any member during office hours; and

(*i*) no person shall be entitled to object to the text of the minutes of any meeting unless he was present at the meeting to which they relate.

## CHAPTER III

*Forms of applications for permission under Section* 13 (1).

4. **Forms of applications for permission under Section** 13(1).—Every person or body (including a department of Government) desiring to obtain the permission referred to in Section 12 of the Act shall make an application in wiriting to the Authority in the form prescribed in schedule I to those Regulations.

5. **Communications of orders on application for development.**—All communications containing the grounds of refusal of permission for development shall be addressed in the name of the applicant and be sent to him by registered post acknowledgement due and shall constitute conclusive evidence of the fact that the decision of the Authority has been communicated

6. **Form of register of application.**—The register of applications for permission to develop land shall contain the particulars as prescribed in Schedule II to the Regulations.

### SCHEDULE I

*Form of application for permission under Section* 13(1).

### FORM A

*For permission to develop land other than erection of a building as defined in sub-section* (j) *of Section* 2 *of the Act.*

From

_____

_____

_____

To

The Secretary,
Delhi Development Authority.

Dated

Sir,

I/We beg to apply for permission to undertake/carry out the development of the site described below—

(*a*) Description of the land [location with name of the road(s) on/off which the property abuts and boundaries]

(*b*) Area Sq. yds. Acres.

2. I/We attach herewith the following documents [in triplicate, other than document (a)]

(*a*) Documentary proof in support of title in the land proposed for development.

(*b*) 400 ft.-1 inch map showing the exact location of the site proposed for development with all the existing roads abutting the site to a depth of about ½ mile along its property.

(*c*) 100 ft.-1 inch map showing the boundaries of the proposed site and indicating all the existing roads with the property and also in the one abutting it to a depth of about 200 ft. all round it.

(*d*) A note indicating the type of development proposed *viz.*, residential, commercial or industrial.

3. The plans have been prepared by

Name of registered Planner/Architect/ Surveyor .....

Registration No. .....

Address .....

.....

4. I have deposited a fee of Rs. ... .....in accordance with the scale prescribed in the rule made under section 56 (2) (*h*) of the Act.

Yours faithfully,

*Applicant.*

## FORM B

*For permission to erect a building on vacant land or for additions alterations and/or repairs to an existing building.*

FROM

To

The Secretary,

Delhi Development Authority.

*Dated* ———

Sir,

I/We beg to apply for permission to erect/re-erect/make additions and/or alterations to/undertake repairs to a building on a piece of land measuring——— sq. yds, over which I possess the necessary ownership rights, situate at——— Street/Road, Ward No.——— Block No.——— Plot No.——— name of scheme (if any)———

2. I attach in triplicate

(*a*)——— sheets of plans, elevation and sections, stated on the reverse;

(*b*) a specification of the proposed building on the prescribed form.

3. The plans have been prepared by———

Name of registered Architect/Surveyor ———

Registration No. ———

Address N. L. ———

4. The sanitary installation will be done by

Name of Licensed Plumber ———

Licence No. ———

Address ———

Both the Registered Architect and the Licensed Plumber have signed the plans.

5. I have deposited a fee of Rs..... in accordance with the scale prescribed in the rule made under Section 56 (2) (*h*) of the Act.

Yours faithfully,
*Signature of applicant*

*Plans* :—

(*i*) Site plan 16'-0" to an inch showng all drainage linings and sewer connections.

(*ii*) Grôund floor plan
(*iii*) Other floor plans
(*iv*) Typical crose section
(*v*) Longitudinal section
(*vi*) All elevations
(*vii*) ½" to a foot part of the principle elevation of the main building and part of the the. cross section.

} These drawings must be in the form of regular working drawings showing all dimensions of rooms, openings, thickness of walls, materials used for wall roof, floors, foundations, damp proof course, drainage scheme.

## SPECIFICATION SHEET.

Specification of proposed building.

(1) Total plot area——————————————————————Sft.

(2) Total build up area—
Ground floor——Existing ——————Sft. Proposed ——————Sft.
Ist floor—Existing——————Sft. Proposed ——————Sft.
II floor—Existing——————Sft. Proposed ——————Sft.

(3) The purpose for which it is intended to use the building——————————

(4) Specifications to be used in construction of the
(*i*)Foundations ——————————
(*ii*) Walls ——————————
(*iii*) Floors ——————————
(*iv*) Roofs ——————————

(5) Number of storeys of which the building will consist——————————

(6) Approximate number of persons proposed to be accommodated——————————

(7) The number of latrines to be provided——————————

(8) Whether the site has been built upon before or not ; If so, when did the previous buildings cease to be fit for occupation——————————

(9) Source of water to be used for building purposes——————————

*Signature of Applicant*

### SCHEDULE II

*Form of Register of Applications for permission to develop land, other than the erection of a building as defined in Sub-Section* (j) *of Section 2 of the Act.*

(1) Serial No.
(2) Name and address of applicant.
(3) Date of receipt of the application under section 13 in the office of the Authority.
(4) Description of the land, its location and area.
(5) Orders passed on the application—
(*a*) Whether permission granted or refused (with resolution number and date).
(*b*) Grounds of refusal of permission ;
(*c*) date of communication of the decision to applicant.
(6) Remarks, if any.

II. For permission to erect a building on vacant land or for additions, alterations and/or repairs to an existing building.

(1) Serial No.
(2) Name and address of applicant.
(3) Date of receipt of the application under section 13 in the office of the Authority.
(4) Description of the land, its location and area.
(5) Orders passed on the application—
  (*a*) whether permission granted or refused (with resolution number and date),
  (*b*) grounds of refusal of permission.
  (*c*) date of communication of the decision to the applicant.
(6) Remarks, if any.

[No. F. 1 (48) 58-G. A.].

M. L. GUPTA, Secy.

## MINISTRY OF HEALTH

*New Delhi, the 26th February 1959*

**S.O. 514.**—In pursuance of sub-rule (d) of rule 2 of the Indian Medical Council Rules, 1957 published with the notification of the Government of India in the Ministry of Health S. R. O. No. 1319, dated the 16th April, 1957, the Central Government hereby appoints Dr. K. P. Sarathy, M.B.B.S., M.Sc., Assistant Director of Medical Service (Medical), Madras, as 'Returning Officer' for Madras for the conduct of election of a member to the Medical Council of India under clause (c) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956.

[No. F. 5-40/58-M.I.]

KRISHNA BIHARI, Dy. Secy.

*New Delhi, the 28th February 1959*

**S.O. 515.**—In exercise of the powers conferred by section 33 of the Drugs Act, 1940 (23 of 1940), the Central Government after consultation with the Drugs Technical Advisory Board, hereby makes the following further amendment in the Drugs Rules, 1945, the same having been previously published as required by the said section, namely:—

In the said rules, for sub-rule (1) of rule 124, the following shall be substituted, namely:—

"124(1) The Indian Pharmacopoeia, the Pharmacopoeia of the United States, the National Formulary of the United States, the International Pharmacopoeia and the State Pharmacopoeia of the Union of Soviet Socialist Republics shall be deemed to be prescribed pharmacopoeias for the purpose of the Schedule to the Act."

[No. F.7-94/58-D.]

T. V. ANANTANARAYANAN, Under Secy.

*New Delhi, the 28th February 1959*

**S.O. 516.**—In exercise of the powers conferred by sub-section (1) of section 12 of the Delhi Development Act, 1957 (61 of 1957) and in continuation of this Ministry's notification No. F.12-192/57-LSG, dated the 29th November, 1958, the Central Government, after consultation with the Delhi Development Authority and the Municipal Corporation of Delhi, hereby declares the additional areas described in the Schedule below to be development areas for the purposes of the said Act.

SCHEDULE V

Area for the re-development of Tihar Village, bounded as under:—

East—Pucca road from the junction of Subhash Chowk upto a distance of 1,100' along the road.

South-East—Vacant land, school ground, Tekkia Area upto the agricultural fields fencing.

South—The agricultural field fencing.

West—Pucca service road leading to New Central Jail, fields and upto the pond near the agricultural fencing.

North—Subhash Chowk, Ponds and Single Storeyed Rehabilitation quarters in between.

SCHEDULE VI

Area of Ranjit Nagar and Naraina Villages bounded as under:—

North—An imaginary line running parallel to Patel Road and at a distance of 2,700 ft. from the road.

South—Ring Road from the crossing of the Railway line to the Crossing of Ring Road and Kucha Road near Naraina Abadi.

East—Boundary of Pusa Institute and Kucha Road from Pusa Institute boundary to the Ring Road, near Naraina Abadi.

West—Metergauge Railway Line to Rewari.

[No. F.12-192/57-LSG.]
A. P. MATHUR, Under Secy.

## MINISTRY OF RAILWAYS

### (Railway Board)

*New Delhi, the 1st February* 1959

**S.O. 517.**—In exercise of the powers conferred by Article 309 of the Constitution of India, the President is pleased to decide that the Railway Provident Funds (Temporary Relaxation) Rules promulgated *vide* Railway Board's Notification No. F.41WA(5), dated the 15th January, 1942 as amended by the Notification No. F.42WA(5), dated the 6th August, 1942 shall be deemed to have been withdrawn with effect from the 1st April, 1950.

[No. F(E)52/PF-44/(1).]
R. E. de SA, Secy.

## MINISTRY OF STEEL, MINES AND FUEL

### (Department of Iron and Steel)

### (Iron & Steel Control)

*New Delhi, the 7th March* 1959

**S.O. 518.—/ESS. COMM/IRON AND STEEL-15(1) and 27(1)-Corr(1).**—The following Corrigendum issued by the Iron and Steel Controller is hereby published for general information:

*"CORRIGENDUM*

In the notification of the Gazette of India in the Ministry of Steel, Mines and Fuel (Department of Iron and Steel) No. S.O. 2249/ESS. COMM/IRON AND STEEL/15(1) and 27(1), dated 18th October 1958, published in the Gazette of India under Part II Section 3, Sub-Section (II), dated 1st November 1958, the following corrections shall be made, *viz*:—

IN SCHEDULE-I—TINPLATES

At Page 2018 — *Odd sizes coke unassorted Tinplates.*

Sl. No. 30 *For* Rs. 98·99 *Read* Rs. 89·99
Sl. No. 33 *For* size 20¾ × 14 *Read* size 20 × 14

At Page 2019

Sl. No. 71 *For* size 31 × 18 *Read* size 31 × 18⅛
Sl. No. 79 *For* size 28⅛ × 14·⅛ × 112 × 142 *Read* size 28⅛ × 14·⅛ × 112 × 152
Sl. No. 82 *For* size 32·⅛ × 22 × 112 × 225 *Read* size 32·⅛ × 22 × 112 × 275
Sl. No. 111 *For* size 28 × 27·116 *Read* size 28 × 27·1/16

At Page 2020

Sl. No. 125 *For* size 28 × 19 *Read* size 28 × 19¼
*For* Sl. No. 125 against size 28⅛ × 22⅛ *Read* Sl. No. 126
Sl. No. 143 *For* size 25 × 17·7/8 *Read* size 25 × 17·7/8
Sl. No. 156 *For* size 29¼ × 20¾ *Read* size 29¼ × 20¼
Sl. No. 159 *For* size 30¾ × 23·7/16 × 112 × 232 × 31·7 *Read* size 30¾ × 23·7/16 × 112 × 232 × 31·6

(BEST COKE TINPLATES)

At Page 2021

Sl. No. 189 *For* size 28 × 20 × 56 × 168 × 25 *Read* size 28 × 20 × 56 × 168 × 26
Sl. No. 213 *For* size 28 × 20 × 182 *Read* size 28 × 20 × 112
Sl. No. 214 *For* size 28 × 10 *Read* size 28 × 20

CHARCOAL NO. I

At Page 2022

Sl. No. 230 *For* Rs. 144·22 *Read* Rs. 144·72
Sl. No. 232 *For* Rs. 155·74 *Read* Rs. 155·44

CHARCOAL NO. II

Sl. No. 240 *For* Rs. 182·48 *Read* Rs. 112·48
Sl. No. 254 *For* size 31 × 18·13/16 *Read* size 31¼ × 18·13/16

At Page 2024 — In the last column of the Heading *For* Place extra for tinplates. *Read* Place extra per M/Ton for Tinplates.

At Page 2024 — Part III– Sales by Controlled Stockholders.
In the item next to No. (b) *For* (c) *Read* (c) and Delete the figures under this item under the headings Rate per L/Ton and Rate per M/Ton and insert the following.

| | Rate per L/Ton. | Rate per M/Ton |
|---|---|---|
| Bombay | 10 0 | 9 84 |
| Calcutta | 10 0 | 9·84 |
| Delhi | 5 12 | 5·66 |
| Kanpur | 8 0 | 7·87 |
| Madras | 6 8 | 6·40 |
| Ambala | 5 0 | 4·92 |

At Page 2024 — Under Part III clause -d (1)
*For* "shall be borne the latter" *Read* shall be borne by the latter.

IN SCHEDULE II WIRE AND—WIRE PRODUCTS

At Page 2025 — In item No. 3 under col. 11 untested.
*For* 956 *Read* 926

At Page 2025 — In item No. 5 under col. I untested
*For* 1004·8 *Read* 1004·87

At Page 2025 — In item No. 5 under col. III untested.
*For* 108852 *Read* 1088·52

At Page 2026 — Under Spring steel wire.
Item (1) *For* 56 % to 65% *Read* ·56% to ·65%
(2) *For* 65% to 25% *Read* ·65% to ·75%
(3) *For* 80% and upwards *Read* ·80 % and upwards.

At Page 2028 — Under Part IV—Special Conditions for sale
In line 3 of Clause (1) for " shall apply ex. size"
*Read* " shall apply " ex-site".

IN SCHEDULE III—PIG IRON

At Page 2031 — In Part II—item 2 (1)
*For* ' delivery' *Read* ' delivering'

At Page 2031 — In Part III—item under the heading 'Rate per L/Ton against-Vijayawada
*For* Rs. 5-8 *Read* Rs. 6-8

IN SCHEDULE—IV-PRIME QUALITY STEEL AND SEMIS

At Page 2035 — In item No. 22– insert the term ' Gate channels' as the heading.

At Page 2037 — Under Part I.I—in Para– 2—Second line.
*For* the words ' ex. yard for f.o.r. siding"
*Raed* ' ex-yard or f.o.r. siding"

IN SCHEDULE-V—IRON AND STEEL– DEFFCTIVE AND SCRAP

At Page 2139 — *For* ' 2139' *Read* ' 2039'
In Part I-B-In the heading in item 5
*For* 3/16" to 1/1 *Read* 3/16" to 1/16"
In Part I-A—In item 5(III) under col. II M/T.
*For* 295·42 *Read* 285·42

At Page 2140 — In Part —I-B—In item 7 (ii) under col. III L/Ton.
*For* 415 *Read* 445
In Part—B—In the heading
*For* Part I-T *Read* Part I-B

At Page 2041 — In Part I-B—In item 23(c) under col. II M/Ton.
*For* 690·52 *Read* 590·52

At Page 2042 — Under Foot note NB-*Delete* clause (2)
Also, Delete the figure (1)

At Page 2043 In Part I-C —In item 5(b) under col. III M/T.
*For* 364·45 *Read* 364·15
In item 8(ii) under col. II M/T.
*For* 516·86 *Read* 506·86
In item 8(iii) under col. III M/Ton.
*For* 497·94 *Read* 497·02
In item 12(a) under Col. III M/Ton.
*For* 447·51 *Read* 447·81

At Page 2044 In item 17(D) under Col. I M/Ton.
*For* 370·65 *Read* 270·65
Under Foot note (2)
Delete the letters and figures under Col. I and Col. II and insert the following :—

Under Col. I L/T– M/T. Under Col. II L/T. M/T.
Re. 175/- 172·23 Rs. 200/- 196·84

At Page 2045 Under Part II A (Fresh Re-rollable Scrap)
In item No. 4 and item No. 5 under M/T.
*For* 403·53 *Read* 403·52

At Page 2046 Under Part III-Melting Scrap.
In item No. 5 under M/T.
*For* 172·2 *Read* 172·23

IN APPENDIX I—EXTRAS LIST

At Page 2052 In item No. I (vi) (b)—Extra for high Carbon
*For* (6·7 per cent carbon) *Read* (·6/·7 per cent Carbon).

At Page 2053 In the heading under thickness.
Insert 1/2" after 7/16" as the last Column.

At Page 2054 In item No. B-3(ii)
*For* "width over 5" and under 8/8""
*Read* "width over 5" and under 8""

At Page 2056 Item No. 3 (a)—Angles
Under the heading 1/4" against item 2" × 1·1/2"
*For* 91·68 *Read* 19·68

Item No. 3(a) Angles
Under the heading 3/16" against item No. 1½" × 1½" *For*
*For* "23-12-7" *Read* "23-12-0"

At Page 2058—D Base price item No. 4 Plates 3/8" and up under item 5(ii)
*For* "Exceeding 12' and upto and including 14"
*Read* "Exceeding 12' and upto and including 14'"

At Page 2060-I Under Base price item No. 9 Black Sheets.
*For* size 2'-6" × 2'-2" *Read* 2'-6" × 2'

At Page 2061 *For* size 4' × 10'-4¼" *Read* size 4' × 10'-4½"
" Under the heading 14 gauge against size 4 × 1'-6"
*For* Rs. 3-82 *Read* Rs. 3-12
" Under the heading 14 gauge against size 6' × 1'-3"
*For* Rs. 3-82 *Read* Rs. 3-12

At Page 2062 Under the heading 19 gauge against size 6'-½" × 1'-8¼"
*For* Rs. 7-28 *Read* Rs. 7-8
Under the heading 16 gauge against size 6' × 4'-8"
*For* Rs. 14·79 *Read* Rs. 14·76

At Page 2064 *For* Size 10'—5" × 2"—8" *Read* Size 10'—5" × 2'-8"

At Page 2065 *For* size 10 × 2" *Read* 10 × 2
*For* size 10 × 2"—8 *Read* 10 × 2 —8"
*For* size 10 × 5" *Read* 10 × 5
*For* size 10' × 2"—2½" *Read* 10' × 2'—2½"

At Page 2066 *For* size 10'—2" × 35½" *Read* 10'—2" × 35½"

At Page 2066 *For* size 10' × 3' *Read* 10' × 3'

| | |
|---|---|
| At Page 2066 | *For* size 10′×2—6″ *Read* 10′×2′—6″ |
| At Page 2067 | *For* size 4″×38 ¾″ *Read* 10′—4″×38¼″ |
| At Page 2068 | *For* size 10′—5×3′—6″ *Read* 10′—5″×3′—6″ |
| ,, ,, | *For* size 11′×3″ to 3′—6″ *Read* 11′×3′ to 3′—6″ |
| ,, ,, | *For* size 11′×over 3′—6″ to 4″ *Read* size 11′× over 3′—6″ to 4′ |
| ,, ,, | *For* size 11′×3″—6″ *Read* size 11′×3′—6″ |
| ,, ,, | *For* size 11′×3″—9″ *Read* size 11′×3′—9″ |
| ,, ,, | *For* size 11′×4″—3′ *Read* size 11′×4′—3″ |
| At Page 2069 | *For* size 11′—3″×3″—7 1/4″ *Read* size 11′—3″×3′—7 1/4″ |
| ,, ,, | *For* size 11′—3″×3′—7 1/4″ *Read* size 11′—3″×3′—7 3/4″ |
| At Page 2073 | Under item No. J Base price item No. 10 In I(ii) under the heading M/T. *For* 14·46 *Read* 14·76 |

A. S. BAM,
*Iron and Steel Controller.*"

[No. F-SC(A)-2(274) 58]

J. S. BAIJAL, Under Secy.

## MINISTRY OF REHABILITATION

*New Delhi, the 26th February 1959*

**S.O. 519.**—Whereas the Central Government is of the opinion that it is necessary to acquire the evacuee properties specified in the Schedule hereto annexed in the State of Mysore for public purpose, being a purpose connected with the relief and rehabilitation of displaced persons including payment of compensation to such persons ;

Now, therefore, in exercise of the powers conferred by section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), it is notified that the Central Government has decided to acquire, and hereby acquires, the evacuee properties specifying in the Schedule hereto annexed.

SCHEDULE

| S. No. | Particulars of the property | Name of the town and the locality where the E.P. is situated | Name of the evacuee |
|---|---|---|---|
| 1 | 6/2 Kubersingh Lane, Doddamavalli. | Bangalore City . . | Shri A.R. Sheriff. |
| 2 | 134 Davanathachar St., | Chamarajapet Do. . . | Shri Mohamed Yakoob. |
| 3 | 22 Coles Rd. . . . | Bangalore Civil Area . | Shri R.A.K. Sheriff. |
| 4 | 30 'C' Old Police Lines . . | Do. . . | Shri Abdul Samad. |
| 5 | 11 Eagle St. . . . | Do. . . | Shri Ismail Haji Habeeb. |
| 6 | No. 6 Hall Rd. . . . | Do. . . | Do. |
| 7 | No. 1, Hutchins Rd. . . | Do. . . | Do. |
| 8 | No. 16 Bamboo cherry . . | Do. . . | Shri A.H. Khan. |

[No. 1(1216)/58/Comp.III/Prop.]

RAJA LAL GUPTA, Under Secy.

## (Office of the Chief Settlement Commissioner)

*New Delhi, the 28th February 1959*

**S.O. 520.**—In exercise of the powers conferred by sub-section (1) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri S. S. Bisen, as Settlement Commissioner for the purpose of performing the functions assigned to such officers by or under the said Act with effect from the date he took charge of his office.

[No. 5(20)/Admn.(Reg.)/59]

M. L. PURI,
Settlement Commissioner and Ex-Officio, Under Secy.

**(Office of the Chief Settlement Commissioner)**

*New Delhi, the 28th February* 1959

**S.O. 521.**—In exercise of the powers conferred by sub-section (i) of section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri R. K. Jaiswal, as Assistant Settlement Officer for the purpose of performing the functions assigned to such officers by or under the said Act with effect from the date he took charge of his office.

[No. 8/123/58-Admn(R).]

M. L. PURI,

Settlement Commissioner & Ex-Officio, Under Secy. *for* Secy.

## MINISTRY OF LABOUR & EMPLOYMENT

*New Delhi, the 26th February* 1959

**S.O. 522.**—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), the Central Government hereby appoints Sri Sachchida Nand Verma to be an Inspector for the whole of the State of Bihar for the purposes of the said Act and of any scheme made thereunder, in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with a railway administration, a major port, a mine or an oil-field or a controlled industry.

[No. PF.I/31(559)59.]

*New Delhi, the 27th February* 1959

**S.O. 523.**—Whereas immediately before the Employees' Provident Funds Act, 1952 (19 of 1952), became applicable with effect from the 1st August, 1956, to the factory known as the Phalton Sugar Works Limited, Sakharwadi, District Satara North, there was in existence a provident fund common to the employees employed in the factory, to which the said Act applies and the employees in their establishments mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by section 3 of the said Act, the Central Government hereby directs that the provisions of that Act shall also apply to the aforesaid establishments.

SCHEDULE

1. The Phalton Sugar Works Ltd., Civil Engineering Department, P.O. Sakharwadi, District Stara North.
2. The Phalton Sugar Works Ltd., Medical & Sanitation Department, P.O. Sakhar Wadi, District Stara North.
3. The Phalton Sugar Works Ltd., Colony Watch and Ward, P.O. Sakharwadi, District Stara North.
4. The Phalton Sugar Works Ltd., Primary School, P.O. Sakharwadi, District Satara North.
5. The Phalton Sugar Works Ltd., Nira Godown. P.O. Nira (R.S.), District Poona.
6. The Phalton Sugar Works Ltd., Phalton Office, P.O. Phalton, District North Satara.
7. The Phalton Sugar Works Ltd., Bombay Office, Sangli Bank Building, 4th Floor, 296, Bazar Gate Street, Fort Bombay-1.

[No. PF.II-9(41)58.]

*New Delhi, the 28th February* 1959

**S.O. 524.**—Whereas immediately before the Employees' Provident Funds Act, 1952 (19 of 1952), became applicable with effect from the 1st November, 1952, to the factory known as the Asawra Mills Limited, P.O. Asawra, Ahmedabad there was in existence a provident fund common to the employees employed in the factory, to which the said Act applies and the employees in their Head Office at Kodak House, 3rd Floor, Dr. Dadabhai Naoroji Road, Fort, Bombay—1;

Now, therefore, in exercise of the powers conferred by section 3 of the said Act, the Central Government hereby directs that the provisions of that Act shall also apply to the Head Office of the said factory situated at Bombay.

[No. PF. II-9(47)/58.]

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*CORRIGENDUM*

*New Delhi, the 25th February* 1959

**S.O. 525.**—In the Ministry of Labour & Employment Notification No. S.O. 2640 dated the 10th December, 1958, published at page 2923 in the Gazette of India, Part II, Section 3, sub-section (ii), dated the 20th December, 1958.

1. *for* "Shri A. K. Basu, Deputy Financial Adviser to the Government of India in the Ministry of Labour and Employment" *substitute* "Shri A. K. Basu, Internal Financial Adviser and *ex-officio* Deputy Secretary to the Government of India in the Ministries of Labour and Employment and Law";

2. *for* "Shri A. K. Basu, Deputy Financial Adviser to the Government of India, Ministry of Labour and Employment, New Delhi" *substitute* "Shri A. K. Basu, Internal Financial Adviser and *ex-officio* Deputy Secretary to the Government of India in the Ministries of Labour and Employment and Law, New Delhi".

[No. PF. II.1(8)/58].

P. D. GAIHA, Under Secy.

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*New Delhi, the 27th February* 1959

**S.O. 526.**—In exercise of the powers conferred by sub-section (1) of section 12 of the Mines Act, 1952 (35 of 1952), the Central Government hereby reconstitutes the Mining Board for the State of Madhya Pradesh with the following members:.

*Chairman*

The President, Board of Revenue, Madhya Pradesh *ex-officio* [Nominated by the Central Government under clause (a) of section 12(1)].

*Members*

(1) The Regional Inspector of Mines, Parasia Inspection Region, Chhindwara, *ex-officio* [Nominated by the Central Government under clause (b) of section 12(1)].

(2) Dr. (Mrs.) Seeta Parmanand, M.P., Parmanand Bungalow, Chhindwara. [Nominated by the Central Government under clause (c) of section 12(1)]

(3) Shri R. A. Trivedi, M.L.A., M/s. J. A. Trivedi Brothers, Mining Proprietors, Balaghat (M.P.). [Nominated by the Mineral Industry Association under clause (d) of section 12(1)].

(4) Shri W. Bright, Chief Mining Engineer, C/o. Shaw Wallace & Co. Parasia, Chhindwara. [Nominated by the Madhya Pradesh Mining Association under clause (d) of section 12(1)].

(5) Shri A. C. Maity, Secretary, Chhattisgarh Colliery Workers' Federation, Kurasia Colliery Branch, P.O. Kurasia, M.P. [Nominated by the Chhattisgarh Colliery Workers' Federation, under clause (e)(ii) of section 12(1)]

(6) Shri S. O. Gupta, Secretary, Rashtriya Manganese Khadan Prantik Kamgar Sadan, P.O. Tirodi, District Balaghat. [Nominated by the Central Government under clause (e)(ii) by section 12(1)]

[No. MI-3(2)/58.]

*New Delhi, the 2nd March 1959*

**S.O. 527.**—The following draft of a further amendment to the Coal Mines Labour Welfare Fund Rules, 1949, which the Central Government proposes to make in exercise of the powers conferred by section 10 of the Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947), is published as required by sub-section (1) of the said section for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 1st April 1959

Any objection or suggestion which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government

*Draft Amendment*

In the said rules, for rule 42, the following rule shall be substituted, namely —

"42. *Conditions of service of persons appointed under section 9 of the Act* — Until other provision is made in this behalf, persons appointed under section 9 of the Act shall be governed—

(a) by such rules relating to conditions of service of Government servants generally, as have been made applicable with or without modifications to such persons, and as are in force immediately before the 1st March, 1959, and

(b) by such other rules relating to conditions of service of Government servants generally, as may, after the said date, be made applicable with modifications, if any, to such persons by the Central Government"

[No MII-1(11)/58]

P N. SHARMA, Under Secy.

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*New Delhi, the 27th February 1959*

**S.O. 528.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the National Insurance Company Limited and their workmen

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

REFERENCE No. 54 OF 1958

PARTIES.

Employers in relation to the National Insurance Company Limited

and

Their workmen

*Camp Calcutta, dated the 18th February, 1959*

PRESENT

Shri Salim M Merchant, B A LL B, Chairman

APPEARANCES

Shri K P Mookerjee Secretary, Bharat Manufacturers, Traders and Dealers Association with Shri R S Agarwal, Sarvashri S M Khaitan and P K Ghosh, Manager's, National Insurance Co Ltd, Calcutta, for the employers

Shri G N Bhattacharjee, Advocate, with Shri P P Rabindranathan, Secretary, Shri A K Roy Choudhury, Treasurer, and Shri K C Mondal, Vice President, National Insurance Employees' Union, for the workmen

State West Bengal Industry: Insurance

AWARD

The Government of India, Ministry of Labour & Employment, by its Order No. LR.II-11(20)/58 dated 4th October 1958, made in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (XIV of 47), was pleased to refer to me for adjudication the industrial dispute between the parties above named in respect of the matter specified in the following schedule to the said order:—

"Whether the workmen in the National Insurance Company Limited Calcutta are entitled to any relief on account of increase in the cost of living index and, if so, to what extent."

2. After the written statements of the parties were received the hearing of the dispute was fixed at Calcutta on 2nd January 1959 and on the application of the National Insurance Employees Union which represented the workmen, the hearing was adjourned to 4th February 1959, on which date and on 5th and 6th instant the representatives of the parties were heard on the merits of the dispute. Thereafter, there were talks of settlement between the parties and the hearing was adjourned to 17th February 1959 at Calcutta and at the adjourned hearing today (18th February 1959), after prolonged discussions between themselves and at my intervention the parties have been able to reach a settlement, the terms of which are embodied in the joint application filed by the parties today. A copy of the said application containing the terms of settlement is annexed hereto and marked Annexure 'A'. The parties have prayed that an award be made in terms of the settlement and as the terms, in the facts and circumstances of the case appear to me to be fair and reasonable, I make an award in terms of annexure 'A' which shall form part of this award.

3. No order as to costs.

*Camp: Calcutta, 18th February* 1959.

SALIM M. MERCHANT, Chairman,
Central Government Industrial Tribunal, Dhanbad.

ANNEXURE 'A'

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD

REFERENCE No. 54 OF 1958

PARTIES:

Employers in relation to the National Insurance Company Ltd.

AND

Their workmen.

May it please the Tribunal:

We the parties above named have reached the following settlement in respect of the subject matter of this dispute and pray that an award be made in terms thereof:—

1. It is agreed that the existing scheme of dearness allowance applicable to the employees of the Calcutta Office of the company shall be varied as follows with effect from 1st January 1958:—

   For the clerical staff the dearness allowance shall be 60% of the basic salary with a minimum of Rs. 55 per month and a maximum of Rs. 90 per month.

2. Each existing member of the clerical staff will get an increase of Rs. 9 per month subject to a maximum of Rs. 90 per month in the dearness allowance payable to him as on 18th February 1959 with effect from 1st January 1958.

3. The monthly dearness alowance payable to the subordinate staff will increased from Rs. 33 to Rs. 38 per month effective from 1st January 1958.

4. It is agreed that the management will make payment of the amount of the arrears of dearness allowance payable to the clerical staff and

the subordinate staff as agreed above along with their salary for the month of February, 1959.

At Calcutta this the 18th day of February 1959.

For the Employers:
K. P. MOOKERJEE,
Secretary, Bharat Manufacturers Traders and Dealers Association.

S. M. KHAITAN,
Manager.

P. K. GHOSH,
Manager.

R. S. AGARWAL,
Secretary.

For the workmen:
G. N. BHATTACHARJEE,
Advocate.

P. P. RAVINDRANATHAN,
Secretary,
National Insurance Employees' Union.

For the workmen:
K. C. MONDAL,
Vice-President,
National Insurance Employees Union.

A. K. ROY CHOWDHURY,
Treasurer.

[No. LRII/11(20)/58.]

Taken on file.

SALIM M. MERCHANT, Chairman.

*New Delhi, the 2nd March* 1959

**S.O. 529.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal. Dhanbad, in the industrial dispute between the employers in relation to the M/S. Andrew Yule & Co. Ltd., and their workmen.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL, TRIBUNAL, DHANBAD

REFERENCE NO. 55 OF 1958.

PARTIES:

Messrs. Andrew Yule & Co. Limited, P.O. Dishergarh.

and

Their workmen.

*Camp: Calcutta, dated the 23rd February,* 1959.

Industry: Coal State: West Bengal.

PRESENT:

Shri Salim M. Merchant, B.A.LL.B.—Chairman.

APPEARANCES:

Shri D. Narsingh, Advocate, instructed by Shri B. P. Kabi, Security Officer—for Messrs Andrew Yule & Co. Ltd.

Shri S. M. Banerjee, Advocate, with Shri M. M. Saha, Advocate, instructed by Shri S. K. Rudra, Office Secretary, Colliery Mazdoor Congress—for the workmen.

AWARD

The Government of India, Ministry of Labour & Employment, by its Order No. LR.II-2(88)/58, dated 11th October 1958 was pleased in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (XIV of 1947), to refer to me for adjudication an industrial dispute stated to be between Messrs. Andrew Yule & Co. Ltd., P.O. Dishergarh and their workmen in respect of the following matter specified in the Schedule to the said Order:—

"Whether the union's demand for a higher scale of pay to the tractor driver than that awarded by the Labour Appellate Tribunal (Colliery Disputes) for car or lorry drivers is justified and if so, what should be the appropriate scale for the tractor driver?"

2. Upon the usual notices being issued after receipt of the reference by the Tribunal, the Colliery Mazdoor Congress representing the workmen filed its

statement of claim on 15th December 1958 and the Chief Mining Engineer of Messrs. Andrew Yule & Co. Ltd. filed its written statement in reply on 6th January 1959.. The company in its written statement has raised a preliminary objection that the present reference against it was invalid as the company is not the employer of the tractor driver concerned who is employed in the Sodepur workshop by Messrs. Bengal Coal Company Limited and it is not his employer being only the managing agents of the said company. Upon this contention being urged at the adjourned hearing of this dispute today, the representatives of the union filed an application stating that in view of the said legal objection against the maintainability of this reference against Messrs. Andrew Yule & Co. Ltd. the workmen do not desire to press their claim against that company without prejudice to their right to raise and press a fresh dispute against the proper employers. The representatives of Messrs. Andrew Yule & Co. Ltd. have stated on the said application that they have no objection to the said application, which in fact they could not have, as they are not the employers concerned.

3. In the result, the reference against Messrs. Andrew Yule & Co. Ltd. fails and is dismissed against them, without prejudice to the workmen's right to raise and press an industrial dispute with regard to the subject matter of this reference against their proper employers.

4. No order as to costs.

(Sd.) SALIM M. MERCHANT, Chairman,
Central Government Industrial Tribunal, Dhanbad.

Camp: Calcutta,
*The 23rd February, 1959.*

[No. LRII/2(88)58.]

## ORDERS

*New Delhi, the 26th February 1959*

**S.O. 530.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the **Loyabad Colliery of** M/s Bird & Co. (P) Ltd., and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of Loyabad Colliery of M/s Bird & Co. (Private) Ltd., P.O. Bansjora (Dhanbad) was justified in placing Shri Anil Kumar Ghosh, Welfare Officer's Clerk, in grade III. If not, to what relief is he entitled?

[No. LRII-2(184)58.]

*New Delhi, the 27th February 1959*

**S.O. 531.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Barora Colliery and their workmen in respect of the matter specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act

SCHEDULE

(i) Whether the dismissal of Shri Damodar Missir, Engine Khalasi, is in order;
(ii) If not, to what relief he is entitled.

[No. LRII-2(169)58.]

K. D. HAJELA, Under Secy.

*New Delhi, the 2nd March 1959*

**S.O. 532.**—In exercise of the powers conferred by clause (b) of sub-section (1) of section 3, read with section 4 and sub-section (2) of section 5 of the Minimum Wages Act, 1948, (11 of 1948), and after consulting the Advisory Board, as required by the proviso to sub-section (2) of the said section 5, the Central Government hereby revises minimum rates of wages in respect of the categories of employees specified in the schedule annexed hereto and employed in employments carried on by or under the authority of the Ministry of Works, Housing and Supply, the same having been previously published as required by clause (b) of sub-section (1) of the said section 5.

This notification shall come into force on and from the 1st April, 1959.

SCHEDULE

| | *Categories of employees* | *All inclusive minimum rates of wages per day* |
|---|---|---|
| | | Rs. n.p. |
| 1. | Central Public Works Department (contract labour) in Ajmer (Rajasthan) Mates | 1.75 |
| 2. | Central Public Works Department (contract labour) within the Union territory of Delhi Bhisties | 2.00 |
| 3. | Central Public Works Department in Uttar Pradesh Mazdoor or Beldar (Adult female) | 1.37 |

[No. LWI(1)-6(4)/57.]

PYARE LAL GUPTA, Under Secy.

ORDER

*New Delhi, the 28th February 1959*

**S.O. 533.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to Messrs Tulsidas Khimji, Bombay and their workmen, regarding the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A, and clause (d) of sub-section (1) of section 10, of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri F. Jeejeebhoy as the Presiding Officer, with headquarters at Bombay, and refers the said dispute to the said Tribunal for adjudication.

SCHEDULE

Whether the management of M/s. Tulsidas Khimji, was justified in retrenching 14 clerks and 2 peons mentioned below from the 15th November, 1958 and whether proper procedure was adopted in retrenching them. If not, to what relief the retrenched workers are entitled?

1. Sri Pravin Badhika
2. Sri K. S. Mahadik
3. Sri Tanaji Arjun
4. Sri Liladhar Paniya
5. Sri P. S. Salunke
6. Sri Dungarji C. Ashar
7. Sri Vasanji Kalyanji
8. Sri Namdeo Ayaroji

9. Sri Kashinath Kabal
10 Sri Dakhonde
11. Sri H. V. Hatkar
12. Sri D. H. Palav
13. Sri B. L. Vichare
14. Sri Harivallabh Bhat
15. Sri Gajanan S. Shivankar
16. Sri M. S. Parab.

[No. 1.RIV-28(5)/59.]

A. L. HANDA, Under Secy.

## MINISTRY OF INFORMATION AND BROADCASTING

### ORDER

*New Delhi, the 28th February 1959*

**S.O. 534.**—The Central Government hereby: (a) directs, in pursuance of the provisions of the Order of the Government of India in the Ministry of Information and Broadcasting No. S.R.O. 3805 dated the 26th December, 1955 and in modification of the Order of the Government of India in the Ministry of Information and Broadcasting No. S.O. 212 dated the 15th January, 1959 that the Advisory Panel of the Central Board of Film Censors at Bombay shall consist of 32 members with immediate effect; and

(b) appoints Professor G. D. Parikh as a member of the Advisory Panel of the said Board at Bombay with immediate effect in exercise of the powers conferred by the proviso to sub-rule (3) of rule 8 read with sub-rule (2) rule 9 of the Cinematograph (Censorship) Rules, 1958.

[No. 11/6/57-FC.]

D. R. KHANNA, Under Secy.

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